TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 34

228 U.S. 278

GEORGE WHITAKER, A. M. DEBRUHL, T. G. EMBLER ET AL., APPELLANTS,

vs.

STATE OF NORTH CAROLINA

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

FILED MARCH 8, 1948.

SUPREME COURT OF THE UNITED STATES

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INDEX

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[fol. 1]

IN SUPREME COURT OF NORTH CAROLINA, NINETEENTH DISTRICT, FALL TERM, 1947

No. 78

STATE

v.

GEORGE WHITAKER, A. M. DEBRUHL, T. G. EMBLER, H. E. SETZER, J. E. ROGERS, FRED BLACK AND R. B. ROBERTSON

From Buncombe

Before Nettles, J., July Term, 1947, Buncombe Superior Court. Defendants appealed

IN SUPERIOR COURT OF BUNCOMBE COUNTY

ORGANIZATION OF COURT—JULY TERM, 1947

Be It Remembered, that a regular term of the Superior Court of Buncombe County for the trial of Civil and Criminal cases was opened and held at the Courthouse in Asheville, North Carolina, on July 7, 1947.

Present and presiding under and by virtue of a commission duly executed from the Executive Department of North Carolina, the Honorable Zeb V. Nettles, Superior Court Judge of the 19th Judicial District of North Carolina.

Present and prosecuting on behalf of the State, the Honorable W. K. McLean, Solicitor of the 19th Judicial District of N. C.

L. E. Brown, Sheriff of Buncombe County, returned into the Court the following venire, duly drawn and summoned to appear on Monday, July 7, 1946, for the purpose of selecting a grand jury therefrom and the remainder to serve as petit jurors: J. O. Lee and 44 others (naming them).

[fol. 2] The names of the remainder of the venire as returned into Court were placed on separate scrolls of paper and placed in a hat and at the direction of the Court, Billy Hart, aged seven years, drew one at a time and the following were chosen to serve as Grand Jurors for the ensuing six months: Hugh F. Felder and seventeen others.

The Court appointed Hugh F. Felder as Foreman of the Grand Jury, and the oath as such was duly administered and the oath of Grand Jurors was duly administered to the remainder. William Rymer was duly sworn as Officer of the Grand Jury and, after sitting for the charge of the Court, the Grand Jury retired to their quarters to transact the business of the Grand Jury.

The remainder of the venire as returned into the Court by the Sheriff were duly sworn as petit jurors, they were as follows: Paul F. Pittillo and 25 others. The oath was duly administered and the Court proceeded to transact the following business:

Case #2778

STATE

vs

GEORGE WHITAKER, A. M. DEBRUHL, T. G. EMBLER, H. E. SETZER, J. E. ROGERS, FRED BLACK AND R. B. ROBERTSON

The Solicitor called the above case, which was an appeal from the Police Court of the City of Asheville. The case had been duly instituted in said court and tried therein. From judgment and sentence, each of the defendants gave notice and duly perfected an appeal to the Superior Court of Buncombe County. The Solicitor stated that he would try on the original warrant issued out of the Police Court, which is in words and figures as follows:

IN THE POLICE COURT OF THE CITY OF ASHEVILLE, N. C.

WARRANT

STATE OF NORTH CAROLINA,

County of Buncombe:

HENRY CALDWELL, on information and belief, maketh [fol. 3] oath that on or about the 20th day of May, 1947, in the City of Asheville, North Carolina, and/or the County of Buncombe, State of North Carolina, that George Whitaker, an employer, and A. M. DeBruhl, an Officer and Agent of the Asheville Building and Construction Trades Council; T. G. Embler, an Officer and Agent of the International Brotherhood of Electric Workers, Local Union

No. 238; and H. E. Setzer, an Officer and Agent of the United Brotherhood of Carpenters and Joiners of America, Local Union No. 384; J. E. Rogers, an Officer and Agent of the Brotherhood of Painters, Paper Hangers, and Decorators of America, Local Union No. 839; Fred Black, an Officer and Agent of the Bricklayers, Masons, and Plasterers, International Union of America, Local Union No. 1; and R. B. Robertson, an Officer and Agent of United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Asheville Local No. 487, all of the aforementioned organizations being labor unions or organizations, did unlawfully and willfully enter into an illegal combination or conspiracy in restraint of the right to work and of trade or commerce in the State of North Carolina and against the public policy of the State of North Carolina, by executing a written agreement or contract by and between said employer and said Labor Unions and Organizations or combinations, whereby persons not members of said unions or organizations are denied the right to work for said employer, or whereby membership is made a condition of employment or continuation of said employment by said employer and whereby said named unions acquired an employment monopoly in any and all enterprises which may be undertaken by said employer are required to become or remain a member of a labor union or labor organization as a condition of employment or continuation of employment by said employer whereby said unions acquire an employment monopoly in any and all enterprises entered into by said employer in violation of House Bill #229, Session 1947, [fol. 4] General Assembly of North Carolina, Chapter 328, 1947 Session Laws of North Carolina, and particularly sections 2-3 & 5 thereof; and Chapter 75 of the General Statutes of N. C., contrary to the form and statutes in such cases made and provided and against the peace and dignity of the State.

H. C. Caldwell, Affiant.

Sworn to and subscribed before me this the 15th day of July, 1947. C. C. Waddell, Deputy Clerk, Police Court.

STATE OF NORTH CAROLINA,

County of Buncombe:

To the Chief of Police or any other lawful officer of the County of Buncombe—Greetings:

You are hereby commanded to arrest the bodies of George Whitaker, A. M. DeBruhl, T. G. Embler, H. E. Setzer, J. E. Rogers, Fred Black, and R. B. Robertson and them safely keep so that you have them before the Judge of the Police Court at 9:00 A.M. of the next immediately following day, then and there to answer the above charges set forth.

C. C. Waddell, Deputy Clerk of Police Court.

IN SUPERIOR COURT OF BUNCOMBE COUNTY

MOTION TO QUASH WARRANT

The defendants move to quash the warrant upon which they are called for trial for the following reasons:

First: The warrant does not allege a criminal offense against the State of North Carolina.

Second: The law on which such warrant is based or bottomed, to wit, H. B. #229, General Assembly of North Caro- [fol. 5] lina, 1947, Chapter 328, 1947 Session Laws of North Carolina, and Chapter 75 of the General Statutes of North Carolina, is void, illegal and unconstitutional in that:

1. Said law arbitrarily and unreasonably deprives the defendants and others similarly situated of freedom of contract and liberty to employ and of other rights and liberties protected under the 14th Amendment to the U. S. Constitution and under Article I, Section 17, of the Constitution of the State of North Carolina, in violation of the due process clause of the 14th Amendment to the United States Constitution, and Article I, Section 17, of the Constitution of the State of North Carolina.

2. The said law constitutes class legislation and is discriminatory, denying the union defendants and others similarly situated of equal protection of the laws contrary to the 14th Amendment to the United States Constitution and to Article I, Section 17, of the Constitution of the State of North Carolina.

3. The said law impairs and previously restrains the exercise by the union defendants herein of their civil rights

of assembly and speech guaranteed under the First Amendment as protected against invasion by the State under the 14th Amendment to the United States Constitution.

4. The said law is in conflict with the Labor-Management Act of 1947, in violation of Article VI, Section 2, of the United States Constitution.

Third: No crime under Chapter 75 of the General Statutes of North Carolina or under House Bill No. 229 of the General Assembly of North Carolina, 1947, Chapter 328, 1947 Session Laws of North Carolina, has been committed under the facts set forth in such warrant.

Motion denied — defendants except.

Defendants' Exception No. 1.

[fol. 6] In Superior Court of Buncombe County

Plea of Not Guilty

Plea: Defendants plead not guilty.

In Superior Court of Buncombe County

Jury and Verdict

To try the guilt or innocence of the defendants comes the jury of the following good and lawful men: J. O. Hill and eleven others.

Same being duly sworn and impaneled, the trial of the case proceeds.

The jury heretofore impaneled to try this case returns into open Court, and for its verdict, says: That the defendants are guilty of violating the provisions of House Bill No. 229, 1947 Session of the General Assembly of N. C., Chapter 328—1947 Session Laws of North Carolina, and Chapter 75 of the General Statutes of North Carolina, as charged in the warrant.

Motion to Set Aside Verdict and for New Trial

Upon coming in of the verdict the defendants move to set the verdict aside as against the greater weight of the evidence and for a new trial for errors assigned and to be assigned. Motion overruled. Defendants except.

Exception No. 4.

IN SUPERIOR COURT OF BUNCOMBE COUNTY

MOTION FOR AN ARREST OF JUDGMENT

The defendants move for an arrest of judgment for the following reasons:

First: The warrant does not allege a criminal offense against the State of North Carolina.

Second: The law on which the warrant is based or bottomed, to wit, House Bill No. 229, General Assembly of North Carolina, 1947, Chapter 328—1947 Session Laws of North Carolina, and Chapter 75 of the General Statutes of North Carolina, is void, illegal and unconstitutional in that:

1. Said law arbitrarily and unreasonably deprives the defendants and other similarly situated of freedom of contract and liberty to employ and of other rights, liberties protected under the 14th Amendment to the U. S. Consti- [fol. 7] tution, and Article I, Section 17, of the Constitution of the State of North Carolina, in violation of the Due Process Clause of the 14th Amendment to the United States Constitution, and Article I, Section 17, of the Constitution of the State of North Carolina.

2. The law constitutes class legislation and is discriminatory, denying the union defendants and others similarly situated of equal protection of the laws contrary to the 14th Amendment to the United States Constitution, and to Article I, Section 17, of the Constitution of the State of North Carolina.

3. The said law impairs and previously restrains the exercise by the Union defendants herein of their civil rights of assembly and speech guaranteed under the First Amendment as protected against invasion by the State under the 14th Amendment to the United States Constitution.

4. The said law is in conflict with the Labor-Management Act of 1947, in violation of Article VI, Section 2, of the United States Constitution, and Article I, Section 17, of the Constitution of North Carolina.

Third: No crime under Chapter 75 of the General Statutes of North Carolina, or under House Bill No. 229 of the General Assembly of North Carolina, 1947, Chapter 328—

1947 Session Laws of North Carolina has been committed under the evidence herein.

Motion denied. Defendants except.

Exception No. 5.

IN SUPERIOR COURT OF BUNCOMBE COUNTY

JUDGMENT

Upon the defendants being found guilty of the crime charged in the warrant by the jury, the judgment of the Court is that the defendants each pay a fine of $50 and each pay one-seventh of the costs of this action to be taxed by the Clerk.

[fol. 8] To the foregoing sentence and judgment the defendants and each of them, in apt time in open Court, objected and; upon the objection being overruled, the defendants and each of them in apt time excepted.

Exception No. 6.

IN SUPERIOR COURT OF BUNCOMBE COUNTY

APPEAL ENTRIES

Upon coming in of the verdict the defendants move to set the verdict aside as against the greater weight of evidence, and for a new trial, for errors assigned and to be assigned. Motion overruled, and defendants except to the judgment pronounced by the Court the defendants except and appeal to the Supreme Court. Notice of appeal given in open Court; further notice waived. Appeal bond in the sum of $50 adjudged sufficient. Appearance bond in the sum of $300 adjudged sufficient. By consent the defendants allowed 20 days in which to make and serve case on appeal, and 10 days thereafter allowed the State to file counter-case.

This the 17th day of July, 1947.

Zeb V. Nettles, Judge Presiding.

IN SUPERIOR COURT OF BUNCOMBE COUNTY

Statement of Evidence

STATE'S EVIDENCE

H. C. Caldwell, on Direct Examination by Solicitor McLean, testified:

My name is H. C. Caldwell. I am a member of the Detective Force of the City of Asheville. I know each and all of the defendants. On July 14, 1947, I talked with all of the defendants together in regards to a contract they signed on the 20th day of May, 1947. Each and every one of the defendants were present and the statements made by them were in the presence of each other. There was present Mr. George Whitaker—he is a local building contractor engaged in local construction work and has been such for many years and is an employer; A. M. DeBruhl, an Officer and Agent of the Asheville Building and Construction Trades Council; J. G. Embler, an Officer and Agent of the International [fol. 9] Brotherhood of Electric Workers, Local Union No. 238; H. E. Setzer, an Officer and Agent of the United Brotherhood of Carpenters and Joiners of America, Local Union No. 384; J. E. Rogers, an Officer and Agent of the Brotherhood of Painters, Paper Hangers, and Decorators of America, Local Union No. 839; Fred Black, an Officer and Agent of the Bricklayers, Masons and Plasterers' International Union of America, Local Union No. 1; and R. B. Robertson, an Officer and Agent of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Asheville Local Union No. 487; I know that the organizations which I have just named are all labor unions or organizations all affiliated with the American Federation of Labor and that each have local unions in Buncombe County, North Carolina with a total membership of approximately 1,260. The defendants who are named in the warrant admitted to me that they had signed the contract dated May 20, 1947, and that they had signed this document.

The defendant George Whitaker stated in the presence of the other defendants that he was a contractor engaged in local building construction and that he did not employ anybody except union labor, had not since the passage of House Bill No. 229 and did not intend to hire any employees or

use any sub-contractors on any of his contracts in the future unless the sub-contractors were members of the Asheville Building and Construction Trades Council of the City of Asheville, North Carolina, which is a labor organization and that every employee who worked for him had to have a union card or they could not work for him and had not worked for him since the passage of House Bill No. 229, Chapter 328, Session Laws of North Carolina, 1947.

Mr. Whitaker stated that he denied any person the right to work for him unless he was a member of one of the unions mentioned in his contract and that he made it a condition of employment or continuance of employment by him that every [fol. 10] employee either hired by him or a sub-contractor become or remain a member of a labor union or labor organization as a condition of employment or continuation of employment by him.

I asked Mr. Whitaker if he knew that the contract which he had signed gave the members of the unions mentioned therein exclusive employment rights in any and all enterprises entered into by him as a contractor and his answer was yes, that he intended to make it exclusive so far as his employment was concerned; that he had always been a union contractor engaged in building only honest construction and that he had found through many years that the only way to give the best honest construction service was by exclusively employing nothing but union labor.

The other defendants, A. M. DeBruhl, T. G. Embler, H. E. Setzer, J. E. Rogers, Fred Black and R. B. Robertson stated that each signed the contract personally and as an officer and agent of their respective unions and on behalf of such unions and that the written agreement or contract which has been offered by the State as State's Exhibit No. 1 denied persons not members of their unions or organizations the right to work for the defendant Mr. Whitaker and that it made a condition of employment or continuation of employment by the employer that every person had to pay their dues, fees or other charges and be a member in good standing or they could not work for the defendant Mr. Whitaker. The defendants each said that the contract provided for it and they knew that the contract required every person working on any of Mr. Whitaker's jobs to become or remain a member of a labor union or labor organization and that since the contract had been executed Mr. Whitaker and

these defendants had advised every person who wanted employment that they must have their union card or stay off of Geo. Whitaker's job because he had a closed shop contract with these defendants and the unions which they represent.

[fol. 11] (No Cross-Examination).

STATE'S EXHIBIT No. 1

The State offers in evidence *State's Exhibit #1* as follows:

STATE OF NORTH CAROLINA,
County of Buncombe:

This Agreement, Made and entered into this the 20th day of May, 1947, by and between George Whitaker, hereinafter called the Employer, and the Building and Construction Trades Council of Asheville and Vicinity; International Brotherhood Electrical Workers, Local Union No. 238; Brotherhood Carpenters and Joiners of America, Local Union No. 384; Brotherhood Paper Hangers, Painters and Decorators, Local Union No. 934; Bricklayers, Masons and Plasterers International Union Local No. 1; and Local Union #487 United Association of Journeymen, Plumbers, Steam Fitters and Helpers of America, all affiliated with the American Federation of Labor, hereinafter called the Labor Unions of Asheville, N. C.

Witnesseth: In consideration of the mutual promises hereinafter named, the parties hereto agree as follows:

Recognition of Labor Unions

1. The employer agrees to recognize the Labor Unions of Asheville and vicinity as the spokesman of the workers in the industry and the representative of the respective trades taken collectively.

Employment

1. The employer agrees to employ none but union members affiliated with the Building and Construction Trades Council, composed of the various labor unions herein mentioned.

2. The employer further agrees to provide in their specifications when doing any business with sub contractors, that

[fol. 12] sub-contractors will use none other than members of the respective unions affiliated with the Building and Construction Trades Council.

3. The use of members in good standing of the Labor Unions by the employer includes skilled, semi-skilled and unskilled labor on all work now and hereafter being done, directly and indirectly by the employer.

4. The employer agrees to abide by all the rules and regulations of the respective trades affiliated with the Building and Construction Trades Council, and to comply with the rates of wages and the specified hours as recognized by the respective trades. In the event that the employer should engage sub-contractors to perform such work, then the employer agrees that such sub-contractors will observe hours, wages and working conditions as recognized by the different trades.

5. It is agreed by and between the employer and the Labor Unions that both will exert every honorable means toward the execution of this agreement, and will cooperate in every possible way toward furthering the interests of both parties hereto.

6. In consideration of the above, the Labor Unions concede the right of the employer to discharge any employee for incompetency, intoxication, or other just cause.

7. The Labor Unions further guarantee that no strike or picketing shall take place until after all efforts to settle differences have been exhausted.

8. An Arbitration Committee, when found necessary, shall be composed of one representative of the Employer and one of the Council, they to select a third member, Representative of each trade involved in the dispute or difference, to have a seat in the proceedings and decision of the [fol. 13] Arbitration Board to be final and binding.

District

This agreement is to cover the entire district under jurisdiction of this Council, which is half way to the next Council in any direction.

Duration of Agreement

4. This agreement shall be into effect on the 25th day of May, 1947, and shall remain in full force and effect until the 25th day of May, 1949, and shall continue from year to year unless either party expresses a desire for a change ninety days prior to any annual termination date.

In Witness Whereof the Employer has hereunto set his hand and seal, and the Labor Unions of Asheville have executed the within agreement by and through their respective duly authorized agents, with the seals of each union hereto attached, all by order of the Labor Unions duly given in regular meetings assembled.

George Whitaker, Employer; Asheville Building and Construction Trades Council, by Arthur M. DeBruhl, Business Manager; International Brotherhood Electric Workers, Local Union No. 238, by T. G. Embler, President; Brotherhood Carpenters and Joiners of America, Local Union No. 384, by H. E. Setzer, Business Manager; Brotherhood Paper Hangers, Painters, and Decorators, Local Union No. 934, by J. E. Rogers, Business Manager; Bricklayers, Masons and Plasterers International Union Local No. 1, by Fred Black, Secretary-[fol. 14] Treasurer; Local Union #487, United Association of Journeymen, Plumbers, Steam Fitters and Helpers of America, by R. B. Robertson, Business Manager. (Seal.)

The State Rests.

Demurrer and Motion for Judgment of Nonsuit

Defendants demur to the evidence and move for judgment as of nonsuit. Motion denied. Defendants except.

Exception No. 2

Defendants' Evidence

C. A. Fink, on Direct Examination by George Pennell, testified for defendants:

My name and address is C. A. Fink, Spencer, North Carolina. I am President of the N. C. State Federation of Labor. I have been a member of the trades union movement for

thirty years and for ten years was Treasurer of my local. I have been a member of the Shop Committee for my own local for 25 years, which belongs to the International Brotherhood of Electrical Workers. I was president of the Salisbury, North Carolina Central Labor Union for ten years and served as a member of the State Federation of Labor for thirteen years, and for ten consecutive years I have been President of the North Carolina State Federation of Labor, being elected annually.

During this period I made a study not only from a theoretical standpoint but a comprehensive study from the actual factual situation which has embraced the employments of tens of thousands of working people approximating a total of more than a million over a ten-year period. The staff of the American Federation of Labor and the State Federation of Labor have made in North Carolina with reference to Union Shop or Union Security Agreements most extensive studies.

[fol. 15] We have in our libraries hundreds of books, pamphlets, reports, graphs and statistical data on this subject. It includes official reports and surveys of the U. S. and the North Carolina Departments of Labor, and those of the various manufacturing associations, Chambers of Commerce and other organizations. We make a special effort to make an honest study of the facts collaborated by what might be termed as our opposition.

We maintain a staff of nine members including statisticians and experts on economics and social case work, both white and colored, who are constantly endeavoring to get all the facts, without prejudice, for, any movement not founded on truth will sooner or later fail.

Based upon my long active experience and studies of the trade union movement, I know the influences and effect of union shop or union security agreements upon the economic welfare of the citizens of the State.

Union shop or union security agreements constitute the most effective means of obtaining and securing for labor organizations, their members, and the individual union members for it guarantees:

Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity.

Equality of bargaining power, with consequent betterment of working conditions by insuring labor a united front in the contest for a fair share of the joint products of capital and labor.

Protection of working standards by preventing cut-throat wage competition by non-union employees.

Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of such bene- [fol. 16] fits as members of the union rather than as "free riders."

An increased measure of union responsibility for their obligations under collective bargaining agreements by providing a means of imposing disciplinary action, and an ability effectively to police collective bargaining agreements to the end of obtaining full compliance on the part of the employees embraced thereunder, it being impossible to secure such full compliance where some employees are not union members and thus not subject to union laws and discipline.

Elimination of jurisdictional strife by safeguarding against raids and other disruptive tactics of rival labor organizations.

And, finally, security and maintenance of organization once it has been achieved thereby promoting labor-management cooperation by eliminating the suspicion and hostility which often characterizes the initial stages of employer recognition and freeing union energies and resources for constructive cooperation rather than defensive sparring.

(No cross-examination.)

George Whitaker, one of the defendants, testified, on Direct Examination by George Pennell:

My name is George Whitaker. I am one of the defendants in this case. I am described as an employer in the warrant and admit I am an employer of Labor. I am engaged in the business of building contractor, engaged in local building construction and repair. I have had experience as an employer, with labor organizations under Union Security Agreements. For thirty years I have been engaged in building construction and have dealt with unions during that period.

Based upon my experiences as I know the effects of union security agreements on the economic welfare of North Caro- [fol. 17] lina from the employers' viewpoint, I have found that union security agreements result in stability of employment relationships, the promotion of harmony and cooperation as between employer and employees, the eliminaiton of strife and discord both within the plant and as between rival labor organizations, the making available of sufficient skilled, competent and experienced artisans through the training of apprentices, the stabilization of employee's compensation by the predetermination of applicable wage rates, all having the effect of and actually resulting in increasing production.

I find I get the best skilled workmen for each member has had to stand a rigid examination, as to his qualifications to do the job.

In some cases such as the Electricians, Plumbers, and Steam Fitters, the law requires Certificates of Proficiency, while in other cases there is no law requiring examinations, but the trade unions of their own volition require examinations after service as apprentices.

These examinations and certificates of efficiency to a marked degree afford the employer safety and the satisfaction that he can safely guarantee his contract as being in compliance with the law of contracts and building codes both municipal and state wide.

A contract with the Building Trades Council relieves a contractor of all work and worry in assembling a force and obtaining skilled men of the various trades, for example, if a contractor needs six additional electricians, all that he has to do is to call on the Business Agent for the requisite number and they are supplied.

One of the greatest benefits is that when a contractor is about to bid on any job, he can obtain wage scales, working hours, and conditions, of every craft he will need for the proposed bid, and whether or not such labor will be avail- [fol. 18] able, for without labor of proper education, qualification and ability the employer cannot move an inch, by union security agreements the contractor is assured that during the period the cost of construction for labor will not be changed or altered, and he can with a reasonable degree of certainty make an intelligent bid on the proposed construction.

All the time the contractor has the right to discharge any employee for incompetency, indifference, intoxication, or other justifiable reasons.

(No Cross-examination.)

A. E. Brown, on Direct Examination by George Pennell, testified for defendants:

My name and address is: A. E. Brown, Durham, North Carolina. I am an organizer for the American Federation of Labor assigned to the State of North Carolina, in charge of Labor Union matters in the State.

I have had 29 years experience in connection with employer and labor contracts within the State of North Carolina.

I became a member of the Tobacco Workers Union in 1918, was Secretary for four years, and later was elected for seven terms as President of Durham Central Labor Union. For the past eight years I have been on the staff of the A. F. of L. as full time Organizer assisting Labor Organizations throughout the State in the negotiation of contracts and the settlement of disputes or disagreements but my experience as a conciliator in strikes is extremely limited since such things as strikes in the A. F. of L. in N. C. are very rare, and exceptional.

I have made extensive investigation, survey and study of the economic conditions within the State of North Carolina with particular reference to union security agree- [fol. 19] ments. The nature of my work has made it essential that I keep informed through experience and study of economic conditions within our State, in particular reference to Union Security Agreements. This is necessary to intelligently negotiate Union Security Agreements with a particular employer. Our success in negotiating an agreement depended largely upon our ability to furnish the employer with comparable conditions with other employers wherein a mutual advantage could be obtained through a Union security agreement. I have negotiated management labor contracts resulting in management paying to N. C., with the assistance of the research staff of the N. C. State and the American Federataion of Labor, workers over two hundred million dollars.

There are approximately 234 Union Security Agreements with all labor organizations operating within the State of North Carolina, as of March 1, 1947.

There are four types of Union Security Agreements. The Closed Shop, Union Shop, Maintenance of Membership and the Check Off of Dues.

A closed shop agreement is one in which the employers and the unions agree, by mutual consent, that all employees covered by the agreement must be members of the Union. The Union Business Agent is to act as referral agent for the employer, whenever called upon by the employer for additional employees. All employment is handled by the Union's Representative, better known as Business Agent or Business Manager.

By the term Union Shop, the employer agrees with the Union, that as a condition of employment, after a probationary period, if the employee is satisfactory he is required by the employer to become and remain a member of the union for the term of the agreement, this gives the employer the right to hire any one he may desire to employ, but does require that such employee support the Union by joining [fol. 20] after the probationary period and then to remain a member for the duration of the agreement. This affords the employer a more simple method of handling grievances through group representation, but each individual employee has the right to take up his grievances himself personally if he desires to.

As to maintenance of Membership, there is the requirement that after an employee has voluntarily joined a union that is party to a contract with the employer, the employee is required, by mutual agreement between the employer and the union, to remain a member in good standing for the duration or life of the agreement.

The number of employees covered by the various types of Union Security Agreement with all labor organizations operating in North Carolina is approximately 54,000 employees. There are, according to the latest available figures from the North Carolina Department of Labor as of February 1, 1947, 735,000 Employees in Non-Agricultural work.

Less than 8% of the total number of gainfully employed non-agricultural employees are embraced under union security agreements, embraced in the manufacturing group:

as of February 1, 1947; there was approximately 400,000 embraced in the non-manufacturing group as of February 1, 1947, there were approximately 335,000.

All organizations holding union security agreements within the State freely admit all qualified applicants into membership.

The requirements made as a condition to membership will take some explanation. In numerous skilled trades the union requires as a condition of membership that the applicant furnish proof that he is fully qualified to perform the duties of a Journeyman Mechanic in the union of the trade of which he seeks membership. Some organizations have [fol. 21] examining committees and subject the applicant to an examination as to his fitness and ability to work at the trade which he seeks to enter as a union Journeyman. In some trades the law requires that they take an examination of the applicant before he is permitted to work at the trade. These rigid examinations are in the interest of public health and public safety. I mention specifically the Electrical Workers' trade, wherein there is constant danger of fire hazards, severe burns and death by electrocution, when incompetent and inexperienced Electricians do installation work. In the matter of plumbing the health of the public is placed in serious danger when incompetent and inexperienced persons install plumbing fixtures. Also from the steam fitting side of the trade there is definite danger of heavy property damage, loss of life and limbs of an explosion from a lack of knowledge of the proper pressure that a certain type of installation can carry safely. For example a contractor on a public school or federal building where specifications are strict and inspection rigid, the contractor is prohibited from employing workmen except those who have passed satisfactory trade examinations.

In the printing trades full apprenticeship service is required as a condition of membership in order to provide employers with skilled, capable and expert workmen who can proficiently serve these trades. In manufacturing plants, the employer usually puts a new employee to work on probation and if at the end of the probationary period the employer is satisfied that the employee has demonstrated his ability then the union accepts his application and votes membership to such persons. In these instances the employer is the one who passes on applicant before the union will receive him.

As to the unions' specific requirements, each member is required to pay a reasonable initiation fee and to pay reasonably monthly dues to be in good standing with the [fol. 22] union. The costs vary on various trades and crafts according to skill, wage rates, death benefits, life insurance, old age benefits, and homes for the aged members to spend their declining years when unable to work longer at their trades. A considerable percent of union dues go to the reserve insurance offered by the union to all its membership which are controlled by the insurance laws of the nation. No labor organization operating within the State which holds union security agreements arbitrarily expel members from membership in the union where such expulsion would mean loss of job under union security agreement.

Each and every A. F. of L. union has in its constitution and by-laws that a member cannot be arbitrarily expelled by anyone or any group except when charges are duly filed in open meeting against a member and then he is given due notice of such charges, and the entire membership is informed of the date set for hearing the charges in open meeting against the member. It is further provided in these constitutions that the member against whom charges have been filed must be represented by counsel, selected by himself, or appointed by the President of the Local Union, if the member fails to retain counsel, and the person so charged given every opportunity to present whatever evidence he and his counsel may desire.

The members of the union present sit as a jury of the whole, and they render the verdict of guilt or innocence, according to the evidence and should the member be dissatisfied with the decision he has a right of appeal to his International and at its hearing to appear in person and be represented by counsel.

I know the various labor union organizations who are involved in the contract offered by the State as its Exhibit #1 and who are described in the warrant issued in the cause. The set-up or activities of the various organizations involved in the contract offered by the State, as Exhibit No. [fol. 23] 1, beginning with the Asheville Building Trades Council, is a Federation of the several trades engaged in building and construction work, in the Asheville jurisdiction. It is chartered by the Building and Construction Trades Department of the American Federation of Labor. It is a

voluntary Federation of the Trades involved, and any trade can withdraw from the council at any time the local union of that trade decides. The purpose of a building trades council is obtaining through this federation closed shop agreements with contractors by pooling the interest of all the local unions constituting the building Trades Council. The Council also serves a good purpose for the contractors in that the contractors may obtain at all times the necessary number of skilled mechanics of any of the Building Trades through the Council that he may need.

Embraced in the membership of the Building Trades Council are the following trades: Asbestos Workers, Bricklayers, Iron Workers, Carpenters and Joiners, Electrical Workers, Operating Engineers, Hod Carriers, Lathers, Sheetmetal Workers, Painters and Paperhangers, Plasterers, Plumbers and Steam Fitters, Roofers, Elevators, Constructors, Tile, Terrazo and Marble Setters, Teamsters and Chauffeurs, Stone Cutters and Granite Cutters, the total of nineteen.

The printing trades Council is a federation of the printing trades unions, consisting of the Typographical Union, the Pressmen's Union, the Stereotypers Union, the Photo Engravers Union, and the Mailers Union, the purpose of this council is to serve the printing trades in a similar manner as the above mentioned Trades serves the trades that do building. In a like manner, the metal trades have a similar federation or counsel for the metal trades. There are numerous miscellaneous trades such as the service trades, furniture factory employees, textile workers, and unions not [fol. 24] embraced within the above mentioned trades, all of these and all of the above mentioned trades have central representation in the City Central Labor to serve all A. F. of L. Unions indiscriminately. While the particular councils above mentioned are legislative bodies for the specific trades embraced in each council, the Central Labor Union is the legislative body for all A. F. of L. Unions in the jurisdiction of the Central Labor Union. In turn all of the Central Labor Unions of the cities and all A. F. of L. Local Unions in the State are federated into the N. C. State Federation of Labor.

The number of union security agreements within the State involved in the respective organizations named in the contract and described in the warrant, as of March 1st, 1947, is 59.

The number of employees embraced in the agreements with the Building Trades Council of the State, locally, are approximately 7,000 in the entire State of North Carolina, and in the contract involved in this case are approximately 1,260 members, the Building Trades Council in the State of North Carolina have Closed Shop agreements only. A uniform type of closed shop agreement is used in the Building Trades Council of North Carolina, and the contract offered in evidence as the State's Exhibit #1 is the usual accepted type of contract used in the nineteen trades composing the Building Trades Councils in North Carolina. They are all drawn in accordance with a standard form but there may be a few deviations on minor matters in isolated instances.

No labor organization operating within the State exercises or possesses any monopoly in the supply of labor in any craft, trade or occupation in any city, county or area within the State by reason of any union Security agreement.

(No cross-examination.)

[fol. 25] James F. Barrett, on Direct Examination by George Pennell, testified for defendants:

My name is James F. Barrett. I was born in Madison County, North Carolina. My residence is Asheville, North Carolina. My occupation is Southern Publicity Director for the American Federation of Labor.

I have been in the Trades Union Movement for 38 consecutive years, except during World War I. I was called by the Secretary of Labor for full time service and assigned to President Wilson's Speaker's Bureau, and during World War II, my employer, the American Federation of Labor, was requested by the Secretary of the Treasury, to release me for employment by his Department, which request was granted, and I was appointed an Assistant Director of War Bond Sales, and assigned to Pay Roll Deduction Division.

I have made a detailed study of the labor situation in North Carolina, with particular reference to Union Security agreements, strikes over Union Security agreements, and general abusive practices, such as is defined by the Courts, and I know the labor situation in this State. North Carolina has been so remarkably free from labor abuses,

costly conflicts and disturbances that Governors of our State, leading legislators, newspaper editors, educators, and numerous others have made frequent public mention of the happy state of affairs upon numerous occasions. The North Carolina State Federation of Labor now has and always has had since its organization men in executive positions of the Federation of the very highest type of citizenship. There has never been one single instance in North Carolina where an AFL Local Union has abused its power, to the hurt of any man, woman, company, corporation, or community.

On the other hand, the State Federation of Labor, our City Central Labor Unions, our Building Trades Councils, Printing Trades Councils and Local Unions have supported every national state and community enterprise launched for [fol. 26] protection of our citizens and the advancement of the interests of all people.

There is not an instance in the history of North Carolina where any AFL Union ever demanded of any employer such a thing as featherbedding. Under methods of modern industry, wherein specialists are employed by management to make time study of each and every operation in order to drain and draw from the working man or woman the last ounce of energy in order for that worker to make production, there is no featherbed. As for demanding of an employer that a stand-in be employed for any reason, such request or demand has never been heard of in the State of North Carolina.

There has been a general practice in this State of using "standby" workers, but that sin was committed by Industry, and not by the workers. Power companies have pursued the policy of having stand-by men on duty call when they were not being paid for same. The worker performed his 8 hours' labor, and then was directed not to leave his home telephone during the 16 hours off, as he might be needed at a moment's notice. Such men were really on duty 24 hours a day, while getting pay for 8 hours.

There are, according to latest official compilation of the State Department of Labor, 718 textile, rayon and hosiery plants in operation in North Carolina. The workers in less than fifty of these 718 plants are organized, and but comparatively few of plants give job security to these union workers. Our greatest industry is made up of these textiles, rayon and hosiery mills, employment figures ranging

from 175,000 at low production to 225,000 at peak production. Careful analysis shows that less than four per cent of these plants have any kind of union organization, and even in the few organized plants no union contract calls for job security. The employers do all the hiring, and anyone who so desires can get a job in any of these 718 plants who desire to work, providing the employer wants to employ them.

[fol. 27] There are, in round numbers, 4,500 men and women employed by the telephone companies in the State. Not a single job security provision exists between any telephone company and any group of organized workers in the State of North Carolina as far as we can ascertain.

The manufacture of furniture has long been one of the dominant industries in North Carolina. Tens of thousands of workers are employed in our furniture factories. Less than 5% of our furniture workers are organized, thus leaving 95% of that great industry wide open to all who seek employment with not even a shadow of a labor union to endanger the right to work.

None of the workers employed in sawmilling, lumber yards, timber cutting, brick yards, clay products, mica mines, or other mines, and there is no claim or charge that any union denies any one the right to work in any of these extensive activities.

One of the largest groups of employed people in the State is that of the retail clerks, while the merchants of the State are thoroughly organized in the Merchant's Association, there is but one local union with a small membership of retail clerks in the whole State, and that is in Asheville. That the merchants control legislation in this State to the extent that only one bill introduced in the Legislature in the past twenty years has been enacted in opposition to the Merchant's Association. The great army of retail clerks are free, absolutely free, from any union control whatever, and no one can say that they are denied the right to work.

The most effective closed shop agreements in North Carolina are those of the printing trades. Yet there are comparatively few such agreements in existence in this State. Not an agreement exists in these trades west of Charlotte. In Charlotte the two daily newspapers and one commercial shop are under closed shop agreements with the printing trades. The numerous commercial shops in Charlotte, except the [fol. 28] one mentioned, are all open shop and anti-union

shop. In Salisbury the daily paper and one commercial shop work under closed shop contract. In Winston Salem the two daily papers and one small commercial shop are closed shop contracts. In Greensboro the two daily papers have closed shop agreements with printing trades. No commercial shop in that City is under contract with the union, all being open shop and anti-union shop. In Durham two daily papers and one commercial shop work under closed shop agreements. In Raleigh the News and Observer work under closed shop, while the Raleigh Times is not only non-union but anti-union. Several commercial shops in Raleigh work under closed shop agreements with the printing trades.

In Wilmington one paper is under agreement with printing trades, while the other daily is non-union. No commercial shop in Wilmington is under agreement with the unions.

In High Point the paper is under union agreement, but no commercial shop uses union labor at all.

We have seven counties in North Carolina's one hundred counties with closed shop agreements in part of the printing plants, while none of the cities in these seven counties embrace one half of the journeymen printing tradesmen in each city and county in the union category. This leaves 93 counties in the State of North Carolina with no union at all, and any one desiring to work at the printing trades and not wishing to affiliate with a union have at least 95 chances out of a hundred to work where no union exists.

There is not a local union of laundry workers in the State of North Carolina, except the one contract with Linen Supply. There is not a single union of hotel and restaurant workers in the State. There is no organization of workers whatever in the pressing clubs, cleaners and dyers. Nor is there a single union of building service employees in the. [fol. 29] State. There is not one single union of school teachers in the State, nor that of office workers and office employees, except that of the one union in Reidsville plant of the American Tobacco Company and the Wright Automatic Machinery Company at Durham. There is no union in the way of any worker who desires to work in a laundry, pressing club, building service, teaching school or work in an office. Nor is there any union of bank employees, insurance groups, real estate brokers, pawn shops, undertakers, pool rooms, beer parlors, wine shops, dance halls or night clubs.

(No Cross-Examination).

Offers in Evidence

Defendants' Exhibit No. 1

The defendants offered in evidence United States Department of Labor Official Bulletin No. 829 entitled "Extent of Collective Bargaining and Union Status 1945." Original copies are hereto attached and filed with the Clerk in lieu of mimeographing.

Defendants' Exhibit No. 2

The defendants offered in evidence U. S. Department of Labor, Bureau of Labor Statistics, Official Bulletin "Extent of Collective Bargaining and Union Recognition 1946." Nine original copies are hereto attached and filed with the Clerk in lieu of mimeographing.

[fol. 29-1] Defendant's Exhibit No. 1

United States Department of Labor
Frances Perkins, Secretary
Bureau of Labor Statistics
Isador Lubin, Commissioner (on leave)
A. F. Hinrichs, Acting Commissioner

Extent of Collective Bargaining and Union Status, January 1945

Bulletin No. 829

[fol. 29-2] Letter of Transmittal
United States Department of Labor,
Bureau of Labor Statistics,
Washington, D. C., April 9, 1945.

The Secretary of Labor:

I have the honor to transmit herewith a report on the extent of collective bargaining and union status in effect in January 1945. This study is based on an analysis of approximately 15,000 employer union agreements as well as employment, union membership, and other data available to the Bureau of Labor Statistics.

This study was prepared under the general supervision of Florence Peterson, Chief of the Industrial Relations Divi

sion. Elizabeth Stark and Philomena Marquardt were in immediate charge of assembling the data.

A. F. Hinrichs, Acting Commissioner.

Hon. Frances Perkins,
Secretary of Labor.

Contents

[fol. 293] Bulletin No. 820 of the United States Bureau of Labor Statistics

[Reprinted from the Monthly Labor Review, April 1945, with additional data]

Extent of Collective Bargaining and Union Status, January 1945[1]

Union Agreement Coverage

Some 14½ million workers were employed under collective-bargaining contracts in January 1945. An analysis by the Bureau of Labor Statistics indicates that these workers included approximately 47 percent of all workers employed in industries and occupations in which unions are actively engaged in obtaining written agreements with employers.[2]

[1] For similar data for previous years see Monthly Labor Review, April 1944, February 1943, May 1942, and March 1939.

[2] It is estimated that approximately 30¼ million workers were employed in occupations in which unions are actively engaged in organizing and seeking to obtain written agreements. In most industries this includes all wage and salary workers except those in executive, managerial, and certain types of professional positions. It excludes all self employed, domestic workers, agricultural wage workers on farms employing fewer than 6 persons, all Federal and State government employees, teachers, and elected and appointed officials in local governments.

It should be noted that the number of workers covered by union agreements is not the same as union membership.

During the year 1944 there was an increase in agreement coverage of over half a million workers, which was equivalent to a 4.5 percent rise in the proportion of employed workers covered by agreements.

Manufacturing.—Approximately 65 percent (more than 8½ million) of all production wage earners in manufacturing industries were employed under the terms of union agreements at the beginning of 1945, representing an increase during the year of 8 percent in the proportion of employees working under union agreements.

The largest increases in the proportion of workers under agreement were in the tobacco and chemical industries and, to a less extent, in the canned and preserved foods industry. Agreements were negotiated for the first time with several large aircraft and petroleum refining companies, as well as with a number of meat packing, shoe, leather tanning, and rubber companies.

The degree of union organization at the beginning of 1945 varied considerably among the manufacturing industries, although not so much as among nonmanufacturing industries and trades. Over 90 percent of the production wage earners were working under union agreements in the aluminum, automobile, basic steel, brewery, fur, glass, men's clothing, rubber, and shipbuilding industries, in contrast to only a little more than 10 percent in the dairy products industry.

Except under closed or union shop conditions, agreements cover nonmembers as well as members employed within the given bargaining unit. On the other hand, some union members may be working in unorganized plants and many civil service employees and teachers are members of unions but are not employed under the terms of bilateral written agreements.

[a] Clerical, professional, service, and construction workers, foremen, and truck drivers connected with manufacturing are treated as occupational groups under nonmanufacturing employees.

[fol. 29-4] *Proportion of Wage Earners Under Union Agreements in January 1945*

MANUFACTURING INDUSTRIES

80–100 percent	60–80 percent	40–60 percent	20–40 percent	1–20 percent
Agricultural equipment	Book and job printing and publishing	Baking	Beverages, nonalcoholic	Dairy products
Aircraft and parts	Clocks and watches	Canning and preserving foods	Chemicals, excluding rayon yarn	
Aluminum	Coal products	Dyeing and finishing textiles	Confectionery products	
Automobiles and parts	Electrical machinery, equipment, and appliances	Flour and other grain products	Cotton textiles	
Breweries	Leather tanning	Furniture	Paper products	
Carpets and rugs, wool	Machinery and machine tools	Gloves, leather and cloth	Silk and rayon textiles	
Cement	Millinery and hats	Hosiery		
Clothing, men's	Paper and pulp	Jewelry and silverware		
Clothing, women's	Petroleum refining	Knit goods		
Furs and fur garments	Railroad equipment	Leather luggage, handbags, novelties		
Glass and glassware	Rayon yarn	Lumber		
Meat packing	Tobacco products	Pottery, including chinaware		
Newspaper printing and publishing	Woolen and worsted textiles	Shoes, cut stock and findings		
Nonferrous metals and products		Steel products		
Rubber products		Stone and clay products		
Shipbuilding				
Steel, basic				
Sugar, beet and cane				

NONMANUFACTURING INDUSTRIES—Continued

80–100 percent	60–80 percent	40–60 percent	20–40 percent	1–20 percent
Actors and musicians	Radio technicians	Bus lines, intercity	Barber shops	Agriculture[1]
Airline pilots and mechanics	Theater—stage hands' motion-picture operators	Light and power	Building servicing and maintenance	Beauty shops
Bus and street car, local		Newspaper offices	Cleaning and dyeing	Clerical and professional, excluding transportation communication, theaters, and newspapers
Coal mining		Telephone service and maintenance	Crude petroleum and natural gas	
Construction			Fishing	
Longshoring			Hotels and restaurants	
Maritime			Laundries	
Metal mining			Nonmetallic mining and quarrying	
Motion-picture production			Taxicabs	Retail and wholesales trade
Railroads—freight and passenger, shops and clerical				
Telegraph service and maintenance				
Trucking, local and intercity				

[1] Less than 1 percent.

[fol. 29-5] *Nonmanufacturing.*—About 33 percent (slightly more than 5½ million) of all nonmanufacturing workers were employed under the terms of union agreements at the beginning of 1945, representing an increase during the year of 6 percent in the proportion of employees working under agreement.

Over 95 percent of the coal-mining, maritime and longshoring, and railroad employees, including clerical and supervisory personnel, and over 90 percent of the employees in the iron-mining and telegraph industries were employed under union agreements.

Nearly 25 percent of the employees in service occupations and slightly less than 20 percent of the clerical and professional employees were under union agreements. A major portion of the clerical and professional workers in the transportation, communications, and public utilities industries and practically all actors and musicians were employed under collective-bargaining agreements. In manufacturing, financial, and business service establishments, and in wholesale and retail trade, only about 13 percent of the clerical and professional employees were under agreement.

Union Status

General Types

The union-status provisions in employer-union agreements can be classified into five general types according to their union-membership requirements and privileges, as well as to the presence or absence of check-off arrangements. The various degrees of union recognition or union security are commonly referred to as closed shop, union shop with or without preferential hiring of union members, maintenance of membership, preferential hiring with no membership requirements, and sole bargaining with no membership requirements. Check-off arrangements are of two kinds, usually referred to as automatic check-off and check off by individual authorization.

Under closed-shop agreements all employees are required to be members of the appropriate union at the time of hiring, and they must continue to be members in good standing throughout their period of employment. Most of the closed-shop agreements require employers to hire through the union unless the union is unable to furnish suitable persons

within a given period, in which case the persons hired elsewhere must join the union before starting to work.

In contrast to closed-shop agreements, a union-shop agreement provides that employers have complete control over the hiring of new employees and such persons need not be union members when hired. They must, however, become members within a specified time, usually 30 to 60 days, as a condition of continued employment. When a union-shop agreement, in addition to requiring that all employees join the union within a specified probationary period, states that union members shall be given preference in hiring, it differs very little in effect from the closed-shop agreement. In a few cases, employees hired before a closed- or union-shop agreement is signed are exempt from the union-membership requirement.

A maintenance-of-membership agreement requires all employees who are members when the agreement is signed, and all who choose later to join the union, to retain their membership for the duration of the agreement. The maintenance-

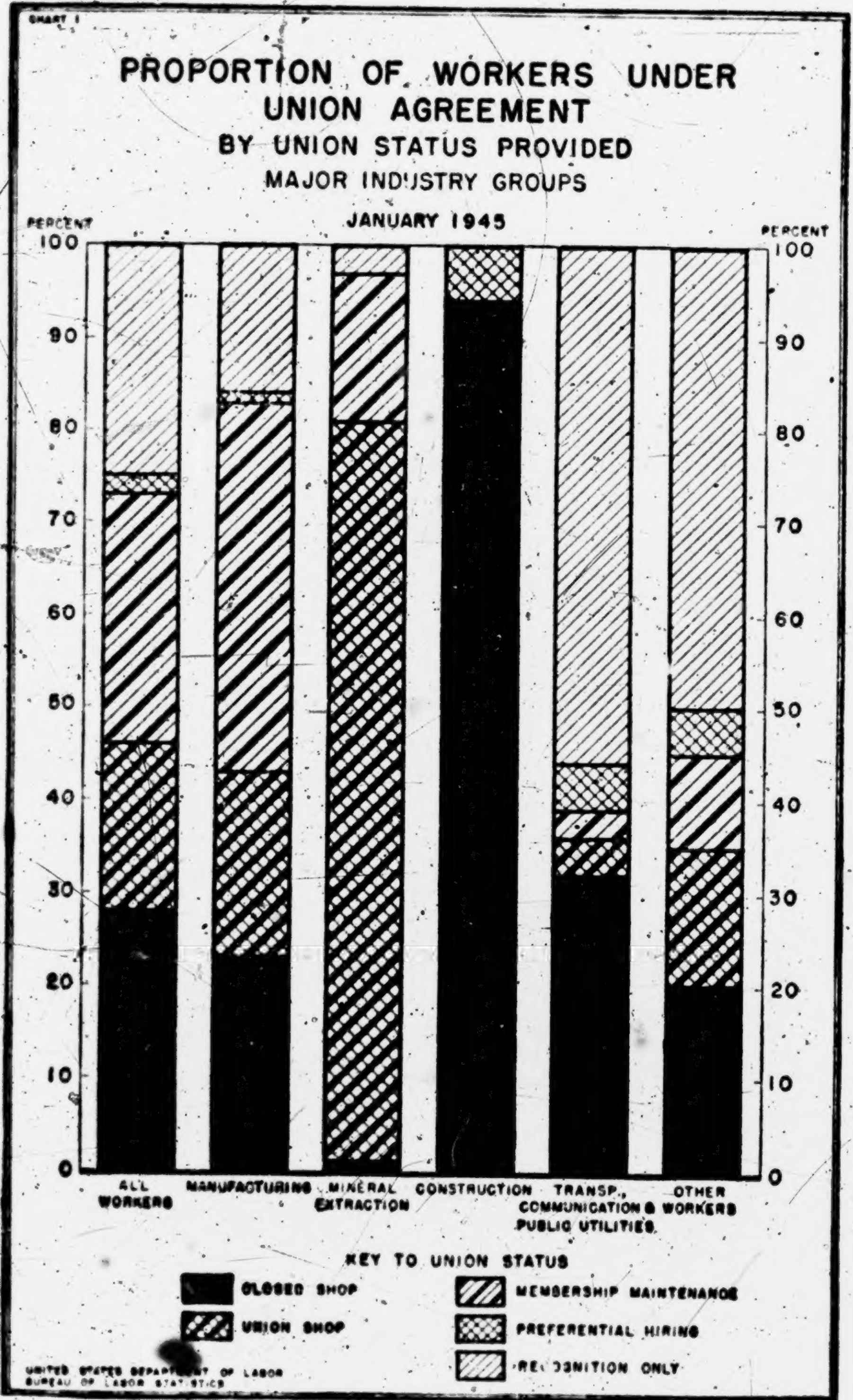


CHART 1
PROPORTION OF WORKERS UNDER UNION AGREEMENT
BY UNION STATUS PROVIDED
MAJOR INDUSTRY GROUPS
JANUARY 1945
PERCENT
100
90
80
70
60
50
40
30
20
10
0
ALL WORKERS
MANUFACTURING
MINERAL EXTRACTION
CONSTRUCTION
TRANSP., COMMUNICATION & PUBLIC UTILITIES
OTHER WORKERS
KEY TO UNION STATUS
CLOSED SHOP
UNION SHOP
MEMBERSHIP MAINTENANCE
PREFERENTIAL HIRING
RECOGNITION ONLY
UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

[fol. 29-7] of-membership provisions established by order of the National War Labor Board allow 15 days during which members may withdraw if they do not wish to remain members for the duration of the agreement.

Some agreements provide for preferential hiring without union-membership requirements. In other words, union members must be hired if available, but otherwise the employer may hire nonmembers and such persons need not join the union as a condition of continued employment.

Some agreements include no membership requirements as a condition of hiring or continued employment. The union is recognized as the sole bargaining agent for all employees in the bargaining unit and is thus responsible for negotiating the working conditions under which all workers are employed, including those who do not belong to the union. This type of agreement, unlike the others, does not enable the union to rely on employment per se to maintain or increase its membership.

Extent of various types of union-status provisions.—Although the proportion of workers under closed- and union-shop clauses remained about the same, the proportion under maintenance-of-membership clauses continued to increase during 1944. By January 1945, approximately 27 percent (3¾ million) of all persons employed under union agreements were employed under maintenance-of-membership clauses, an increase during the year of almost 23 percent in the proportion of workers under such agreements. About 28 percent (4 million) of all workers under agreement were employed under closed-shop provisions and about 18 percent (2½ million) under union-shop agreements. (About 7 percent of the latter were covered by agreements which also specified that union members should be given preference in hiring.) Only 2 percent of all workers under agreement were covered by union preferential clauses, whereas 25 percent were under agreements which provided recognition only.

The proportion of workers under agreement covered by various types of union status in January 1945 is shown by chart 1, for major industry groups. All clerical, professional, and service workers are included in the group "other workers." All trucking and warehousing workers are included in "transportation, communication, and public utilities." Ex-

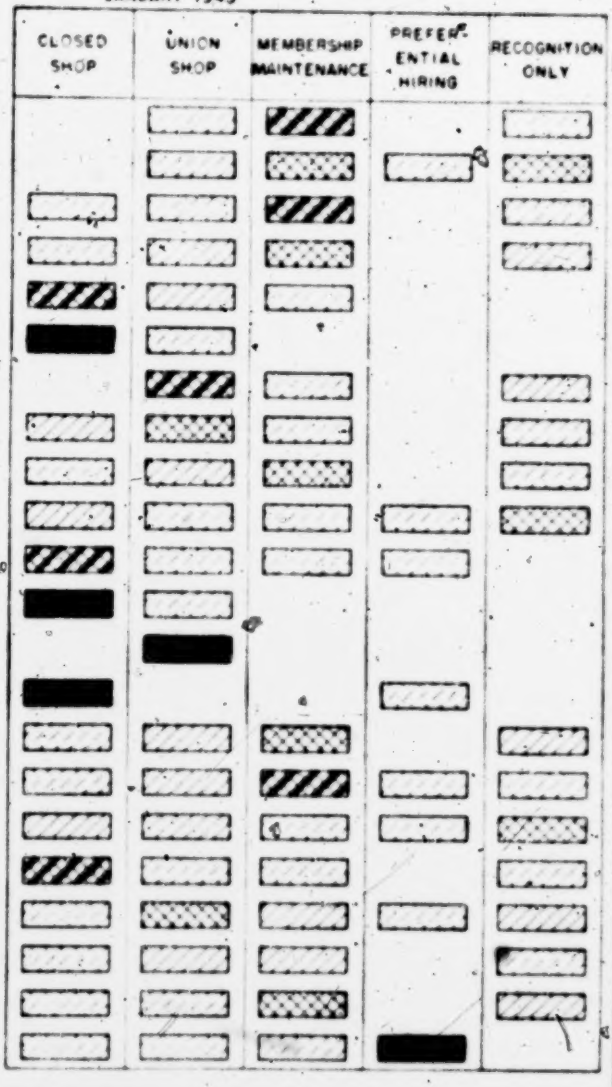
cept for these occupational groups, workers have been included in the industry in which they are employed.

Manufacturing.—In January 1945, closed-shop provisions covered approximately 23 percent of all workers under manufacturing agreements, and union-shop agreements 20 percent,— or together a total of about 3¾ million workers. Of the union-shop agreements, about 10 percent also provided that union members should be given preference in hiring. Most of the wage earners under agreement in the bakery, brewery, men's and women's clothing, and printing and publishing industries were employed under closed- or union-shop clauses. Substantial proportions of those under agreement in the hosiery and canned and preserved foods industries, and a majority of those under agreement in the paper, shoe, shipbuilding, and silk and rayon industries, were working under closed- or union-shop provisions.

About 3½ million workers in manufacturing industries were employed at the beginning of 1945 under maintenance-of-membership clauses. They included 40 percent of all workers under manufacturing agreements, representing an in-

[fol. 29-8]

PROPORTION OF WORKERS UNDER UNION AGREEMENT
BY UNION STATUS IN SELECTED INDUSTRIES AND OCCUPATIONS
JANUARY 1945



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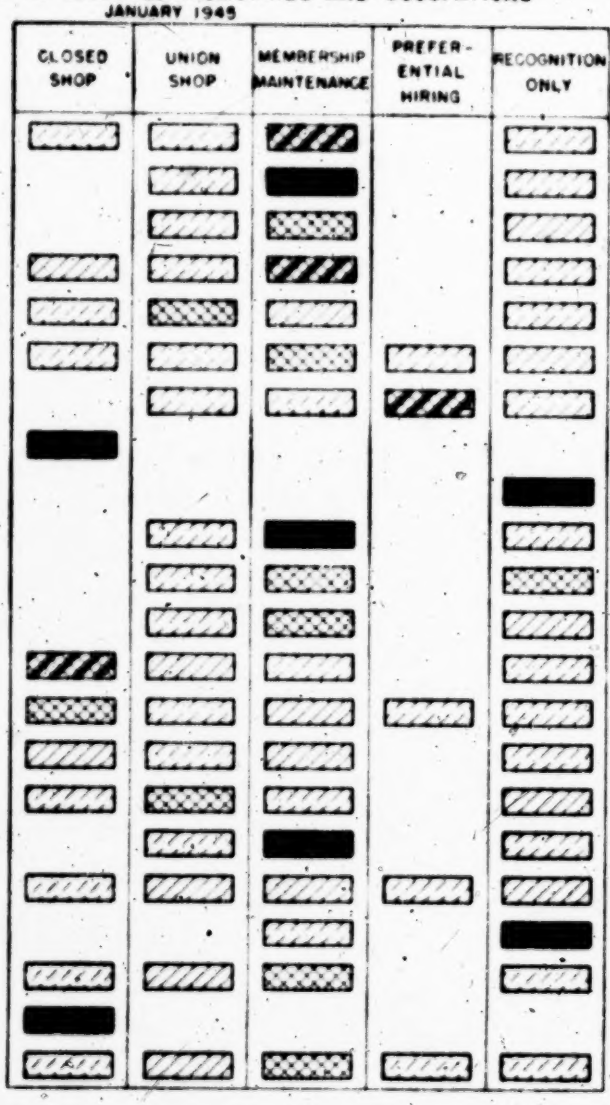
[fol. 29-9]

PROPORTION OF WORKERS UNDER UNION AGREEMENT
BY UNION STATUS IN SELECTED INDUSTRIES AND OCCUPATIONS
JANUARY 1945



UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

[fol. 29-10] crease of about 14 percent during the year in the proportion employed under such agreements. The greatest increase over the previous year in the proportion working under maintenance of membership clauses occurred in the nonferrous metals alloying, rolling and drawing industry (from less than 15 percent to over 50 percent), but there were very substantial increases in the machinery and machine-tool, nonferrous-metals smelting and refining, tobacco, woolen and worsted textile, and electrical machinery industries. At the beginning of 1945 maintenance-of-membership clauses covered most of the employees under agreement in the basic steel industry, a substantial proportion of those in the agricultural and railroad equipment and meat packing industries and a majority of those under agreement in the aluminum, automobile, electrical-machinery, machinery and machine-tool, rubber, tobacco, woolen and worsted textile industries and in the nonferrous-metals alloying, rolling, drawing, smelting and refining industries.

Only about 1 percent of all manufacturing workers under agreement were employed under preferential-hiring provisions with no union-membership requirements. In only one manufacturing industry, pottery, were such clauses common.

About 16 percent of the workers under agreement in all manufacturing industries were employed in plants which recognize the union as sole bargaining agent but do not require union membership as a condition of hiring or continued employment. In the rayon-yarn industry slightly more than half of those under agreement were covered by such clauses and between a third and a half of those in the cotton textile, petroleum and coal products, nonferrous-metals alloying, rolling, and drawing, aircraft, and glass industries.

Nonmanufacturing.—Approximately 36 percent of all workers under agreements in nonmanufacturing industries and occupations were covered by closed-shop provisions and about 16 percent by union shop provisions—a total of more than 2¾ million workers. Only a few of the union-shop agreements also provided that union members should be given preference in hiring. The closed shop was provided in almost all agreements in building construction and trucking and in many of the agreements covering service and trade employees such as barbers and employees in building service, laundry, dry cleaning, and food establishments.

Coal miners and a majority of the organized bus and street railway employees were under union shop agreements.

About 6 percent of the nonmanufacturing workers under agreement were employed under membership-maintenance clauses. The greatest increase over the previous year in the proportion working under such clauses occurred in wholesale and retail trade, metal mining, and crude petroleum and natural gas; in the two last-named industries the majority of the employees were covered by such clauses.

Only 4 percent of all nonmanufacturing workers under agreement were employed under agreements with preferential-hiring provisions but no union-membership requirements. Only in maritime and longshoring are such clauses common.

About 38 percent of the workers under agreement in all nonmanufacturing industries and occupations were employed under contracts which recognized the union as sole bargaining agent but included no membership requirements. [fol. 29-11] More than half of these workers were employed in the railroad industry, where virtual union-shop conditions prevail, although the agreements do not provide for union-shop arrangements.

Check-Off Arrangements

During 1944 there was an increase of about 28 percent in the proportion of workers under agreements who were covered by some form of check-off provisions. Almost 6 million workers, or more than 40 percent of all employees under agreement, were covered by check-off provisions in January 1945. About half were covered by clauses providing for the automatic check-off of all members' dues and the other half by clauses which provide for check-off only for those employes who file individual written authorizations with the employer. Under some of the latter agreements the authorizations, once made, continue in effect for the duration of the agreement; under others they may be withdrawn whenever the employee desires. (If working under a closed or union-shop or maintenance-of-membership agreement, however, the employee must personally pay his dues to the union if he cancels his check-off.) Although most of the check-off clauses provide that all dues and assessments levied by the union shall be collected, some

specify "regular dues only" or check-offs not to exceed a given amount.

Manufacturing. Almost 4½ million workers, or more than half of all workers under agreement in manufacturing industries, were employed at the beginning of the year under agreements which provide for check-off. Slightly fewer manufacturing workers were covered by automatic check-off arrangements than by provisions for check-off upon individual authorization.

During 1944 the proportion of workers under check-off arrangements increased about 38 percent. Most of the increase in the proportion under agreement with check-off arrangements took place in shipbuilding, although there were considerable increases in the railroad-equipment and nonferrous-metals alloying, rolling, and drawing industries. Over 90 percent of the workers under agreement in the basic steel, railroad-equipment, and hosiery industries were covered by check-off provisions, and the great majority of those in the cotton-textile, meat-packing, nonferrous-metals alloying, rolling, and drawing, shipbuilding, silk and rayon textile, and woolen and worsted textile industries.

Nonmanufacturing. About 1½ million, or 26 percent of the workers employed under agreements in nonmanufacturing industries, were covered by some form of check-off arrangement. Most of these check-off clauses, including those covering coal miners, specify that the employer is to deduct the union dues and assessments from the wages of all members. The agreements for about a third of the nonmanufacturing employees covered by check-off clauses provided for check-off only upon authorization of individual employees.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 29-12] DEFENDANT'S EXHIBIT No. 2

U. S. Department of Labor, Bureau of Labor Statistics

For Release April 21, 1947

Extent of Collective Bargaining and Union Recognition, 1946[1]

Union Agreement Coverage

Approximately 14.8 million workers were employed under conditions determined by written collective bargaining agreements in 1946, an increase of 1 million workers compared with 1945. The workers covered by agreement represent 48 percent of the 31 million[2] engaged in occupations in which the unions have been organizing and endeavoring to obtain written agreements. The percentage covered was the same as in the previous year, but fewer workers—approximately 29 million—were eligible for agreement coverage in 1945. Nonmanufacturing industries accounted for

[1] Prepared in the Bureau's Industrial Relations Branch, Boris Stern, Chief with Philomena Marquardt in immediate charge of assembling the information.

For similar data for previous years, see Monthly Labor Review, April 1946, April 1945, April 1944, February 1943, May 1942, and March 1939.

[2] This estimate of 31 million includes all wage and salary workers except those in executive, managerial, and some professional positions, but excludes all self-employed, domestic workers, agricultural wage workers on farms employing less than 6 persons, Federal and State government employees, teachers, and elected or appointed officials in local governments.

It should be noted that the number of workers covered by union agreements is not the same as union membership. Except under closed or union-shop conditions, agreements cover nonmembers as well as members employed within the given bargaining unit. On the other hand, some union members may be working in unorganized plants and many civil-service employees and teachers are members of unions but are not employed under the terms of bilateral written agreements.

much of the increase in employees eligible for agreement coverage.

About 7.9 million production workers in manufacturing were covered by union agreements in 1946 (69 percent of those employed) compared to 8 million (67 percent) a year earlier. In the nonmanufacturing industries 6.9 million workers, or 35 percent of the potentials were employed under union agreements. Part of the decrease in total coverage in the manufacturing industries can be accounted for by changes in employment in such industries as aircraft and shipbuilding, in which a large proportion of the workers are covered by union agreement. In the nonmanufacturing industries the increase in the number of workers can be accounted for by higher employment in such industries as construction, in which the proportion of workers covered by collective bargaining is very high.

The extent of union agreement coverage in the various manufacturing and nonmanufacturing industries is shown in Table 1.

[Tol. 29-13] Because each group covers a range of 20 percent, it is possible for the proportion of covered workers within an industry to increase several percent and still remain within the same group. During 1946 the percentage of workers covered by Agreements in the dairy products industry increased enough to bring it from the 1-19 percent into the 20-39 percent category. Chemicals, excluding rayon yarn and the paper products industries moved from the 20-39 percent into the 40-59 percent group. Canning and preserving foods, dyeing and finishing textiles, and leather gloves increased in the proportion covered so that they shifted from the 40-59 percent to the 60-79 percent column. Moving from the 60-79 percent into the 80-100 percent group, were the electrical machinery and the rayon yarn industries.

TABLE 1

Proportion of Wage Earners Under Union Agreements in 1946

Manufacturing Industries

80–100 percent	60–79 percent	40–59 percent	20–39 percent	1–19 percent
Agricultural equipment	Book and job printing & publishing	Baking	Beverages, nonalcoholic	None
Aircraft and parts	Coal products	Chemicals, excluding rayon yarn	Confectionery products	
Aluminum	Canning and preserving foods	Flour & other grain products	Cotton textiles	
Automobiles and parts	Dyeing and finishing textiles	Furniture	Dairy products	
Breweries	Gloves, leather	Hosiery	Silk and rayon textiles	
Carpets and rugs, wool	Machinery, except agricultural equipment and electrical machinery	Jewelry & silverware		
Cement	Millinery & hats	Knit goods		
Clocks and watches	Paper & pulp	Leather, luggage, handbags, novelties		
Clothing, men's	Petroleum refining	Lumber		
Clothing, Women's	Railroad equipment	Paper products		
Electrical machinery	Steel products	Pottery, including chinaware		
Furs and fur garments	Tobacco	Shoes, cut stock & findings		
Glass and Glassware	Woolen and worsted textiles	Stone and clay products, except pottery		
Leather tanning				
Meat packing				
Newspaper printing & publishing				
Nonferrous metals and products, except those listed				
Rayon yarn				
Rubber				
Shipbuilding				
Steel, basic				
Sugar				

[fol. 29-14]

Non-manufacturing

80–100 percent	60–79 percent	40–59 percent	20–39 percent	1–19 percent
Actors and musicians	Radio technicians	Bus lines, intercity	Barber shops	Agriculture [1]
Airline pilots and mechanics	Theater-stage hands, motion-picture operators	Light and power	Building servicing and maintenance	Beauty shops
Bus and streetcar, local		Newspaper offices	Cleaning and dyeing	Clerical and professional, excluding transportation, communication, theaters, and newspapers
Coal mining		Telephone	Crude petroleum and natural gas	Retail and wholesale trade
Construction			Fishing	
Longshoring			Hotels and restaurants	
Maritime			Laundries	
Metal mining			Nonmetallic mining and quarrying	
Motion picture production			Taxicabs	
Railroads				
Telegraph				
Trucking, local and intercity				

[1] Less than 1 percent.

[fol. 2945] Extent of Union Recognition By Types

Approximately 4.8 million workers were covered by closed-and union-shop with preferential hiring provisions in 1946, compared to 4.25 millions in 1945. Union shop clauses, without preference in hiring, were specified for almost 2.6 million workers in 1946 and 2 million in 1945. The number of workers covered by maintenance-of-membership decreased from more than 3.9 millions in 1945 to 3.6 million in 1946.

Table 2 indicates the changes in the proportion of workers under each type of union recognition from 1941 through 1946. During the war there was a major shift from sole bargaining and bargaining for members only to maintenance of membership. The 1946 figures indicate a trend away from the latter type, and to the union or closed shop.

Table 3 lists the industries in which at least half of the workers who are under agreement are covered by the type of union recognition specified.

A few industries (such as shipbuilding and iron and steel products) which were listed in the 1945 report do not appear this year because 50 per cent of the workers in those industries are no longer covered by any one type of recognition clause. Carpets and rugs and woolen and worsted were both listed under maintenance of membership in 1945 but in 1946 over half of the workers in those industries who were covered by union agreements were under union-shop provisions.

The most marked change has taken place in the automobile industry. In 1945 over half of the covered workers had maintenance-of-membership provisions in 1946 a little over 10 percent had such provisions, while a third were covered by union-shop requirements, a fourth by sole-bargaining arrangements, and another fourth by maintenance-of-union-dues requirements.

The proportion of workers under the different types of union security for a selected group of industries is shown in Table 5, while the approximate number of workers in each of the major census groups for manufacturing and the totals for non-manufacturing are given in Table 6.

TABLE 2

Changes in Union Recognition in the United States, 1941–1946

Item	1941	1942	1943	1944	1945	1946
Eligible for union-agreement coverage:						
Number (in millions)	31	31	31	30 25	29	31 2
Percentage under agreement	30	40	45	47	48	48
	Percentage Distribution [1]					
Workers under agreements providing for—						
Closed shop	46	45	30	28	30	33
Union shop			20	18	15	17
Maintenance of Membership	[2]	15	20	27	29	25
Preferential Hiring	[2]	5	2	2	3	3
Other [3]	[2]	35	28	25	23	22
Total		100	100	100	100	100

[1] Percentages not strictly comparable, year by year, because of slight changes in volume of employment during the period.

[2] No data.

[3] No membership or hiring requirements are mentioned in these agreements, which have clauses specifying sole bargaining, maintenance of union dues, and bargaining for members only.

[fol. 29–16]

TABLE 3

Industries with 50 Percent or More of the Workers Under Agreement Covered by Specified Types of Clauses

Manufacturing Industries

Closed or Union Shop with Preferential Hiring	Union Shop	Maintenance of Membership	Preferential Hiring	Sole Bargaining
Baking	Carpets & rugs, wool	Aircraft & parts	Pottery	Cement,
Breweries	Flat glass	Cigarettes & tobacco		Sugar, cane
Canning & preserving foods	Knit goods	Chemicals		
Clothing, men's	Paper and allied products	Cotton textiles		
Clothing, women's	Sugar, beet	Electrical machinery		
Dyeing & finishing textiles	Woolen & worsted textiles	Machinery except electrical		
Gloves, leather		Meat packing		
Glass containers		Non-ferrous metals		
Hosiery		Petroleum refining		
Printing & publishing		Rubber		
Shoes, cut stock and findings		Steel, basic		

Non-Manufacturing Industries

Construction	Coal mining	Crude petroleum & natural gas	Longshoring	Railroads
Trucking & warehousing		Metal mining	Maritime	Telephone
		Public utilities, electric light & power, water & gas		
		Telegraph		

TABLE 4

Proportion of Workers Under Agreement Covered by Different Types of Union Security in 1946

	Total	Closed shop and union shop with preferential hiring	Union Shop	Maintenance of membership	Other
	%	%	%	%	%
Total	100	33	17	25	25
Manufacturing	100	28	19	38	15
Nonmanufacturing	100	38	16	9	37

[fol. 29-17] Types of Union Recognition

Definitions

Closed shop. Under this type of union recognition all employees must be members of the union at the time of hiring and they must remain members in good standing during their period of employment. The following is the simplest form of a closed shop provision:

> The employer shall employ none but members in good standing in the union. All employees shall remain members in good standing as a condition of continued employment.

Hiring through the union, unless it is unable to supply the required number of workers within a given period, is required under most of the closed-shop agreements and those employees who are hired through other procedures must join the union before they start to work.

Union shop. Workers employed under a union shop agreement need not be union members when hired, but they must join the union within a specified time, usually 30 to 60 days, and remain members during the period of employment. A characteristic clause setting up a union shop generally reads:

> All present employees not on the excluded list (outside the bargaining unit) who are not now members of the Union, must become members within 30 days after the signing of this Agreement. All persons employed, after this date, must become members of the Union within 30 days after date of their employment. All employees will remain members of the Union in good standing as defined by the Constitution and by-laws of

the Union as a condition of employment or the duration of this Agreement.

Union shop with preferential hiring. When the union shop agreement specifies that union members shall be given preference in hiring or that the hiring shall be done through the union the effect is very much the same as the closed-shop agreement.

When the Company is in need of a new employee, the union shall have the first opportunity to supply such employees. If the Union shall be unable to supply such employees within one week, or if the Union waives the right to supply such employees, the Company may hire any person it desires.

Any new employees hired by the Company who are not already members of the Union, shall become members of the Union within two (2) weeks of the date of their employment. Only members in good standing of the Union shall continue in the employ of the Company.

[fol. 29-18] Modified union shop

In some cases the union shop is modified so that those who were employed before the union shop was established are not required to become union members. This type of union security is sometimes referred to as a modified shop.

(a) All employees hired after the date of execution of this agreement, must, after a six week probationary period, become and remain members of the Union in good standing as a condition of continued employment. In individual cases the Employer shall have the opportunity of negotiating with the Union with respect to a longer probationary period.

(b) It is agreed that present employees, who have not and do not desire to join the Union, need not do so as a condition to their continued employment with the Company. It is agreed that all employees who are members of the Union, or who may become members of the Union, shall remain members in good standing during the life of this agreement.

Maintenance of membership

This type of union security requires that all employees who are members of the union a specified time after the

agreement is signed and all who later join the union, must remain a member in good standing for the duration of the agreement. Following the pattern of the maintenance of membership clauses established by the National War Labor Board, most of the agreements with this type of union security clause provide for a 15-day period during which members may withdraw from the union if they do not wish to remain members during the life of the agreement.

> It is agreed that all employees who, fifteen (15) days after the signing of this agreement, namely, (Date) are members of the Union in good standing in accordance with the Constitution and By-Laws of the Union and all employees who thereafter, become members of the Union, shall, as a condition of employment, continue to remain members in good standing as long as the Union specified above remains the collective bargaining agent.
>
> Members of the Union who are delinquent in dues payments shall pay all dues before they shall be permitted to avail themselves of the fifteen (15) day escape period provided for above.
>
> Members of the Union in good standing for the purpose of this provision shall be all persons who are members in good standing as of (Date) or who subsequently become members and have not resigned or withdrawn and so notified the Union in writing prior to (Date).

[fol. 29-19] Maintenance of Union dues

During 1946 a few agreements covering workers employed by large companies which had specified maintenance of membership in 1945 were modified, to provide sole bargaining with the check-off of union dues for all union members as a condition of employment. Clauses of this type (which specify this form of irrevocable check-off) are found in agreements negotiated with the General Motors Corporation, the Goodrich Tire and Rubber Company, Akron, the International Harvester Company, East Moline, Illinois, the Western Electric Company, and Yale & Towne. An example of this maintenance of union dues clause is as follows:

> All employees who, fifteen days after the beginning of the first pay roll week following the date of this Agreement (Date), are members of the union in good stand-

ing in accordance with its constitution and by-laws, and all employees who become members after that date, shall, as a condition of employment authorize the Company for the duration of this Agreement to deduct from their pay and transmit to the Union an amount equivalent to their Union dues as currently established by the Union in accordance with its constitution and by-laws.

Preferential hiring

No union membership is required under this type of clause but union members must be hired if available. When the union cannot supply workers, the employer may hire non-members and they are not required to join the union as a condition of employment.

Members of the union shall have all of the work pertaining to the rigging up of ships and the coaling of same, and the discharging and loading of all cargoes including mail, ships' stores and baggage. When the union cannot furnish a sufficient number of men to perform the work in a satisfactory manner, then the employer may employ such other men as are available.

Other Types of Union Recognition

Sole bargaining

Under some agreements no requirement for union membership or for hiring through the union is specified. The union is the sole bargaining agent for all employees and negotiates the agreement covering all workers in the bargaining unit whether they are members of the union or not.

The Company recognized Union No. — as the exclusive bargaining agency for all production and maintenance employees of the company, exclusive of executive, administrative, office, clerical employees and employees within the jurisdiction of the —— Union, and all supervisory employees with the authority to hire, discharge, discipline or effectively recommend changes in the status of employees as to factory wage rates, hours and working conditions.

Members only

A few agreements stipulate that the union shall act as bargaining agent for its members only, and the agreement does not cover other workers.

> The Employer recognizes the —— Union as the collective bargaining agency for its production and maintenance employees who are members of the Union, at the Employer's —— works and mine.

[fol. 29–20]

TABLE 5

Proportion of Workers Under Union Agreement by Union Security in Selected Industries and Occupations, 1946

Industry	Total	Closed or Union Shop With Pref. Hiring	Union Shop—No Pref. Hiring	Maintenance of Membership	Pref. Hiring	Other
	%	%	%	%	%	%
Manufacturing						
Agricultural machinery	100	1	4	74		21
Aircraft and parts	100	6	8	62		24
Aluminum	100	5	14	79		2
Automobiles and parts	100	1	35	12		52
Canning & preserving foods	100	64	11	19		6
Chemicals, excluding rayon yarn	100	3	34	52		11
Cigarettes & tobacco	100	1	35	54		10
Cigars	100	43	12	43		2
Clothing, men's	100	90	6		4	
Clothing, women's	100	97	3			
Cotton textiles	100	32	8	52		8
Dyeing & finishing textiles	100	56	20	22	1	1
Electrical machinery	100	9	15	57	1	18
Furniture & finished lumber products	100	20	29	37	1	13
Hosiery	100	59	12	25		4
Leather tanning	100	18	23	36		23
Meat packing	100	11	12	75		2
Paper	100	7	53	39		1
Petroleum refining	100	1	7	57		35
Rayon yarn	100	1	3	69		27
Rubber	100	2	15	66		17
Shipbuilding	100	32	11	48		9
Shoes	100	50	5	42		3
Silk & rayon textiles	100	37	26	23		14
Steel, basic	100		3	93		4
Steel products	100	11	33	47	1	8
Woolen & worsted textiles	100	2	66	18		14
Non-Manufacturing						
Coal mining	100		100			
Construction	100	94			6	
Railroads	100					100
Telephone	100	3	1	28		68

fol. 29-21]

TABLE 6

Approximate Number of Workers Covered in 1946 by the Type of Union Security Listed

Industry	Closed Shop	Union Shop with Preferential Hiring	Union Shop	Membership Maintenance
Manufacturing				
Food	210,000	130,000	90,000	185,000
Tobacco	8,000	3,000	15,000	32,000
Textile	40,000	120,000	165,000	180,000
Apparel	515,000	320,000	50,000	8,000
Lumber	25,000	90,000	60,000	76,000
Furniture	20,000	20,000	55,000	70,000
Paper		15,000	126,000	70,000
Printing & Publishing	250,000			
Chemicals	1,000	4,000	60,000	125,000
Petroleum		5,000	15,000	50,000
Rubber		3,000	30,000	140,000
Leather	40,000	61,000	20,000	60,000
Stone, Clay & Glass	5,000	45,000	75,000	35,000
Iron & Steel	30,000	40,000	235,000	725,000
Non-Ferrous Metals	30,000	15,000	40,000	185,000
Electrical Machinery	15,000	25,000	70,000	260,000
Machinery, excluding electrical	15,000	15,000	90,000	460,000
Automobile	1,000	10,000	240,000	80,000
Transportation Equipment	55,000	17,000	50,000	250,000
Miscellaneous	15,000	12,000	20,000	40,000
Totals	1,275,000	950,000	1,506,000	3,031,000
Non-Manufacturing				
Total All Groups [1]	2,082,000	547,000	1,091,000	664,000

[1] Included in this group are employees in construction, trucking, warehousing, services, clerical, sales and professional occupations, mining, transportation, communications and public utilities.

[fol. 29-22] Check-Off Arrangements

Approximately 6 million workers (41 percent of all under union agreements) were covered by some form of check-off provisions in 1946. This is an increase of close to three-quarters of a million from the 1945 total. Automatic deduction of dues was specified for a little over half of these workers while the others specified check-off of union dues only for employees who give the employer an individual written authorization. Some of these may be withdrawn at any time; others remain in effect for the life of the agreement.

In the manufacturing industries 4.7 million workers (61 percent) had their dues checked off compared to the 4 million (about 50 percent) in 1945. The number of nonmanufacturing workers covered by check-off arrangements remained at

about 1.3 million for 1946, but this was not quite 20 percent of the workers under agreement; in 1945 with only 13.8 million under agreement the same number of workers covered brought the proportion to 24 percent.

Changes in check-off arrangements from 1942 through 1946 are given in Table 7 and they show a gradual increase in the number of workers covered by such provisions. Table 8 lists the industries which have at least half of the workers under agreement covered by one type of check-off. A few industries listed for 1945, such as chemicals, steel products, and men's clothing, no longer have 50 percent of the covered workers under a single type of check-off.

The proportion of workers under agreement by type of check-off for selected industries is given in Table 9, while the approximate number of workers covered by check-off in 1946 for the major manufacturing industries as for non-manufacturing is shown in Table 10.

Below are definitions of the two types of check-off and examples of union agreement clauses providing for each. Table 11 shows the proportion of workers under agreement by each type of check-off during 1946 for manufacturing and non-manufacturing industries.

[fol. 29–23]

TABLE 7

Changes in Check-Off Arrangements in the United States, 1941–1946

	1941	1942	1943	1944	1945	1946
Number Under Agreement (in millions)	10.3	12.5	13.8	14.3	13.8	14.8
		Percentage Distribution [1]				
Workers under agreements providing for—						
Automatic Check-Off	[2]	12	18	21	23	24
Voluntary Check-Off	[2]	8	14	20	16	17
No Check-Off	[2]	80	68	59	61	59
Total		100	100	100	100	100

[1] Percentages not strictly comparable, year by year, because of slight changes in volume of employment during the period.

[2] No data.

TABLE 8

Industries With 50 Percent or More of Workers Under Agreement Covered by Specified Type of Check-Off

Manufacturing

Voluntary	Automatic
Cement	Aircraft engines
Clocks and watches	Aluminum
Glass, flat	Automobiles
Petroleum & coal products	Carpets & rugs (wool)
Sugar, cane	Cigarettes & tobacco
Textiles, except carpets & rugs (woolen) and hosiery	Electrical machinery
	Hosiery
	Leather, except gloves and shoes
	Meat packing & slaughtering
	Non-ferrous smelting & refining
	Rubber tires & tubes
	Steel, basic
	Sugar, beet

Non-Manufacturing

Crude petroleum and natural gas products	Coal mining
Telephone	Iron mining
	Telegraph

[fol. 29–24]

TABLE 9

Proportion of Workers Under Union Agreement by Type of Check-off in Selected Industries, 1946

Manufacturing Industries	Total	Voluntary Check-off	Automatic Check-off	No. Check-off
	%	%	%	%
Agricultural Machinery	100	13	41	46
Aircraft & Parts	100	35	47	18
Aluminum	100	15	80	5
Automobiles & Parts	100	6	59	35
Canning & Preserving Foods	100	26	11	63
Chemicals, excluding rayon yarn	100	46	22	32
Cigarettes & tobacco	100	1	84	15
Cigars	100	23	36	41
Clothing, men's	100	25	43	32
Clothing, women's	100	3	6	91
Cotton textiles	100	77	21	2
Dyeing & finishing textiles	100	67	20	13
Electrical machinery	100	19	65	16
Furniture & Finished Lumber Products	100	32	28	40
Hosiery	100	30	63	7
Leather Tanning	100	49	20	31
Meat Packing	100	8	76	16
Paper	100	33	14	53
Petroleum Refining	100	46	20	34
Rayon yarn	100	36	45	19
Rubber	100	32	44	24
Shipbuilding	100	17	43	40
Shoes	100	33	23	44
Steel, basic	100	2	94	4
Steel Products	100	21	43	36
Woolen & Worsted Textiles	100	68	20	12
Non-Manufacturing				
Coal mining	100		100	
Construction	100			100
Railroads	100			100
Telephone	100	66		34
Silk, Rayon textiles	100	83	14	3

[fol. 29-25]

TABLE 10

Approximate Number of Workers Covered in 1946 by Type of Check-Off Specified

Manufacturing

(in thousands)

Industries	Automatic	Voluntary
Food	160	84
Tobacco	43	6
Textiles	158	349
Apparel	240	133
Lumber	5	49
Furniture	53	60
Paper	33	63
Printing & Publishing		
Chemicals	61	97
Petroleum	19	53
Rubber	92	66
Leather	60	59
Stone, Clay & Glass	43	88
Iron & Steel	702	147
Non-ferrous metals	142	91
Electrical machinery	297	87
Machinery excluding electrical	251	177
Automobiles	415	41
Transportation equipment	219	103
Miscellaneous	39	24
	3,032	1,777
Non-Manufacturing		
Total all groups [1]	605	726
Totals	3,637	2,503

[1] Included in this group are employees in construction, trucking, warehousing, services, clerical, sales and professional occupations, mining, transportation, communications and public utilities.

[fol. 29-26] Check-Off Arrangements

Definitions:

Automatic check-off. Many agreements specify that the employer shall deduct the union dues from the pay of all union members. In addition they may specify that initiation fees, and assessments shall be checked-off.

> The Company will deduct from the pay of each employee covered by this agreement all union initiation fees, dues and assessments.

Voluntary check-off. A number of agreements specify that the employer shall check-off union dues or assessments only for those employees who sign individual authorization.

In most cases the employee may withdraw his authorization whenever he wishes.

> The Company agrees that any member of Local — may, upon written instructions to the Company with a copy of Local —, request the Company to deduct his Union dues from his pay check once each month and the Company agrees that such collected dues will be turned over monthly to the Financial Secretary of Local— with full accounting thereof. It is understood that any Union member may rescind such deduction instructions at any time provided the Company is given written thirty days notice with a copy to Local— on a form provided for that purpose. Unless rescinded, authorization for deduction of all dues shall continue for the duration of this agreement.

[fol. 29-26]

TABLE 11

Proportion of Workers Under Agreement by Types of Check-Off in 1946

	Total	Automatic check-off	Voluntary check-off	No check-off
	%	%	%	%
Total	100	24	17	59
Manufacturing	100	38	23	39
Non-Manufacturing	100	9	10	81

[fol. 29-27] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 29-28] Evidence Closed.

DEMURRER AND RENEWAL OF MOTION FOR JUDGMENT OF NONSUIT

Defendants demur to the evidence and renew their motion for judgment as of nonsuit. Motion denied. Defendants except.

Exception No. 3

IN SUPERIOR COURT OF BUNCOMBE COUNTY

ASSIGNMENTS OF ERROR

The defendants, each and all of them, having excepted to the rulings and Judgment of the Court in this action, assign as error:

[fol. 30] Assignment #1: The Court erred in overruling the defendants' Motion to Quash the Warrant, as set out in Exception #1 (R. p. 5).

Assignment #2: The Court erred in denying defendants' demurrer and in overruling defendants' motion for judgment as of nonsuit at the close of the State's evidence, as set out in Exception #2 (R. p. 14).

Assignment #3: The Court erred in denying defendants' demurrer and in overruling their motion for judgment as of nonsuit at the close of all the evidence, as set out in Exception #3 (R. p. 29).

Assignment #4: The Court erred in overruling defendants' motion to set aside the verdict, as set out in Exception #4 (R. p. 6).

Assignment #5: The Court erred in overruling defendants' motion for an arrest of judgment as set out in Exception #5 (R. p. 7).

Assignment #6: The Court erred in signing the judgment, as set out in Exception #6 (R. p. 8).

IN SUPERIOR COURT OF BUNCOMBE COUNTY

STIPULATION AS TO CASE ON APPEAL

In apt time it is stipulated and agreed by and between William K. McLean, Solicitor in and for the 19th Judicial District of North Carolina, and George Pennell, Attorney

of record for the defendants George Whitaker, A. M. DeBruhl, T. G. Embler, H. E. Setzer, J. E. Rogers, Fred Black, and R. B. Robertson, that the foregoing is a proper statement of the case on appeal and shall constitute the case on appeal by the defendants to the Supreme Court, which, together with the record proper and assignments or error, hereinbefore set forth, shall constitute the Case on Appeal to the Supreme Court.

[fol. 31] This the 3rd day of August, 1947.

W. K. McLean, Solicitor of the 19th Judicial District.

Geo. Pennell, Attorney for Defendants,

(Transcript Certified by Clerk Superior Court.)

[fol. 32] In the Supreme Court of North Carolina, Fall Term, 1947

No. 78

State

v.

George Whitaker, M. DeBruhl, T. G. Embler, H. E. Setzer, J. E. Rogers, Fred Black and R. B. Robertson

Defendants' appeal from Nettles, J., July Term, 1947, Buncombe Superior Court.

Opinion—Filed December 19, 1947

This is a criminal action in which the defendants were charged with a violation of Sections 2, 3, and 5 of Chapter 328 of the Sessions Laws of 1947. For convenience of reference the statute is reproduced here in full.

"An Act to protect the right to work and to declare the public policy of North Carolina with respect to membership or non-membership in labor organizations as affecting the right to work: to make unlawful and to prohibit contracts or combinations which require membership in labor unions, organizations or associations as a condition of employment: to provide that membership in or payment of money to any labor organization or Association shall not be necessary for employment or for continuation of employment and to authorize suits for damages.

The General Assembly of North Carolina do enact:

Section 1. The right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion. It is hereby declared to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization or association.

Sec. 2. Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina.

Sec. 3. No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

Sec. 4. No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

Sec. 5. No employer shall require any person, as a condition of employment or continuation of employment to pay any dues, fees, or other charges of any kind to any labor union or labor organization.

Sec. 6. Any person who may be denied employment or be deprived of continuation of his employment in violation of Sections 3, 4 and 5, or of one or more of such Sections, shall be entitled to recover from such employer and from any other person, firm, corporation, or association acting in concert with him by appropriate action in the courts of this State such damages as he may have sustained by reason of such denial or deprivation of employment.

[fol. 33] Sec. 7. The provisions of this Act shall not apply to any lawful contract in force on the effective date hereof but they shall apply in all respects to con-

tracts entered into thereafter and to any renewal or extension of any existing contract.

Sec. 8. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, and the application thereof to other person or circumstances, but shall be confined to the part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstance involved.

Sec. 9. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 10. This Act shall be in full force and effect from and after its ratification."

Chapter 75 of the General Statutes makes combinations, conspiracies and contracts in restraint of trade illegal and punishable as misdemeanors.

The defendant, George Whitaker, was a building contractor of the City of Asheville. The defendant, A. M. DeBruhl, was an officer and agent of the Asheville Building and Construction Trades Council of that City. The other defendants were officers and agents of local trade unions or organizations affiliated with the American Federation of Labor, as was set out in the warrant. The defendants were convicted in the Police Court of the City of Asheville, in which the case had been duly instituted and tried, and from the judgment and sentence in this case defendants gave notice of appeal to the Superior Court, where the case was tried *de novo*. When the case was called for trial in the Superior Court, the Solicitor announced that he would try the defendants on the original warrant issued in the Police Court.

The warrant charged the defendants, George Whitaker, an employer, and A. M. DeBruhl, an officer and agent of the Asheville Building and Construction Trades Council, T. G. Embler and the other defendants as officers and agents of local trade unions and organizations "did unlawfully and willfully enter into an illegal combination or conspiracy in restraint of the right to work and of trade or commerce in

the State of North Carolina and against the public policy of the State of North Carolina, by executing a written [fol. 34] agreement or contract by and between said employer and said Labor Unions and Organizations or combinations, whereby persons not members of said unions or organizations are denied the right to work for said employer, or whereby membership is made a condition of employment or continuation of said employment by said employer and whereby said named unions acquired an employment monopoly in any and all enterprises which may be undertaken by said employer are required to become or remain a member of a labor union or labor organization as a condition of employment or continuation of employment by said employer whereby said unions acquire an employment monopoly in any and all enterprises entered into by said employer in violation of House Bill #229, Session 1947, General Assembly of North Carolina, Chapter 328, 1947 Session Laws of North Carolina, and particularly sections 2, 3 and 5 thereof, and Chapter 75 of the General Statutes of North Carolina.

In the Superior Court the defendants made a motion to quash the warrant on the alleged grounds that the warrant did not charge a criminal offense and that Chapter 328 of the Session Laws of 1947 was enacted in violation of Article I, Section 17, of the Constitution of North Carolina and in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Federal Constitution; and it was further alleged that the Act was in violation of freedom of speech in assembly guaranteed by the First Amendment to the Federal Constitution and protection from State invasion by the Fourteenth Amendment.

The defendants also alleged the Act was in conflict with the Labor Management Act of 1947 and Article VI, clause 2, of the Federal Constitution, but this argument was not pressed on appeal to this Court.

The motion to quash was overruled, to which the defendants accepted.

All of the defendants were convicted by the jury on the offenses charged in the warrent. The defendants thereupon made a motion for an arrest of judgment, assigning as grounds therefor the same reasons set out in the motion to quash.

[fol. 35] This motion was overruled and sentence was imposed by the Court that each of the defendants pay a

fine of $50.00 and also pay one-seventh of the costs. From this judgment and sentence the defendants appealed to this Court.

The charge of the Court to the jury was not sent up with the record and it is, therefore, to be taken that the Judge fully complied with the statute, G. S. 1-180, and stated in a plain and correct manner the evidence given in the case and declared and explained the law arising thereon.

In the brief of the defendants filed in this case, it is conceded that if the statutes alleged to have been violated are valid, the warrant properly charges the offenses alleged, and that there was adequate evidence of the violation of the statute. The defendants in their brief abandoned their assignments of error Nos. 1, 2 and 3, except as to their contention that a violation of Section 3 of the 1947 Act did not constitute a criminal offense.

From the State's evidence it appeared that the defendant, George Whitaker, was a local building contractor engaged in local construction work and had been such for many years. The defendant, A. M. DeBruhl, was an officer and agent of the Asheville Building and Construction Trades Council. The defendant, T. G. Embler, was an officer and agent of the International Brotherhood of Electric Workers, Local Union No. 238; H. E. Setzer, an officer and agent of the United Brotherhood of Carpenters and Joiners of America, Local Union No. 384; J. E. Rogers, an officer and Agent of the Brotherhood of Painters, Paper Hangers, and Decorators of America, Local Union No. 839; Fred Black, an officer and agent of the Bricklayers, Masons and Plasterers International Union of America, Local Union No. 1; and R. B. Robertson, an officer and agent of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Asheville Local Union No. 487.

These labor unions or organizations are all affiliated with the American Federation of Labor, with a total membership of approximately 1,260.

[fol. 36] These defendants, by their own admission, had entered into a written contract dated the 25th of May, 1947, which was offered in evidence. This contract provided that the employer agreed to recognize the labor unions of Asheville and vicinity as the spokesmen for the workmen in the industry and the representatives of their respective trades taken collectively. It was agreed that the employer would

employ none but the union members, affiliated with the Building and Construction Trades Council composed of the various unions mentioned. The use of members in good standing of the labor unions by the employer was to include skilled, semi-skilled and unskilled labor on all work thereafter to be done, directly or indirectly, by the employer.

In Section 4 of the contract, the employer agreed to abide by all rules and regulations of the respective trades affiliated with the Building and Construction Trades Council, and comply with the rates of wages and specified hours recognized by the respective trades. Sub-contractors, if employed, would be likewise bound.

The contract in Section 6 recognized the right of the employer to discharge an employee for incompetency, intoxication or other just causes. Provision was made for arbitration in cases of disputes or differences. The agreement was to be in effect from the 25th of May, 1947, until the 25th of May, 1949, and to continue from year to year unless either party expresses a desire for a change ninety days prior to any annual termination date.

Evidence for the State was not contradicted by any of the defendants. Defendants, however, offered as witnesses certain officers of the State Federation of Labor who, without objection on the part of the State, made statements in the form of arguments, presenting their views as to union security agreements upon the economic welfare of employers and employees and the people of the State generally.

The defendant, George Whitaker, testified in the case and gave his reasons for his willingness to enter into the closed shop contract with the labor unions, which is set out in the record. He did not deny that he had entered into the contract.

[fol. 37] The jury returned their verdict:

> "That the defendants are guilty of violating the provisions of House Bill #229, 1947 Session of the General Assembly of N. C., Chapter 328, 1947 Session Laws of North Carolina, and Chapter 75 of the General Statutes of North Carolina, as charged in the warrant."

On the coming in of the verdict the defendants moved to set it aside for erorrs committed on the trial. The motion

was overruled and defendants excepted. Judgment was entered on the verdict that defendants pay a fine each of $50.00 and each pay one-seventh of the costs.

The defendants moved for an arrest of judgment for the grounds above alleged, and the motion was overruled. Defendants excepted.

To the judgment rendered defendants objected, and excepted; and appealed, assigning errors.

Harry McMullan, Attorney General; T. W. Bruton, Hughes J. Rhodes, Ralph Moody, Asst. Attys. General—for the State; George Pennell, Padway, Woll, Thatcher, Kaiser, Glenn & Wilson, By: Herbert S. Thatcher—for Defendants, Appellants.

SEAWELL, J.

The question whether violation of Section 3, 4 and 5 of the challenged statute constitutes a criminal offence was raised in State v. Bishop, *post*, and affirmatively answered. To this we refer.

Insofar as the same question is raised in this case, it may be, on the same reasoning similarly answered.

We note that appellants' brief abandons assignments of error No. 1 (R. pp. 4 & 30) and No. 2 (R. pp. 14 & 30) relating to the sufficiency of the warrant to state the charge and the sufficiency of the evidence to convict, if the statute is declaratory of a criminal offence, except that they insist on the motion to quash the warrant and arrest the judgment for that cause. We have referred to the contention, *supra*. The defence stresses the contention that Chapter 328 is in contravention of both the State and Federal Constitutions, and, therefore, void.

[fol. 38] While the basic laws under which the validity of the challenged legislation must be determined are elementary, they are, nevertheless, so fundamental as to bear summarization at this point. The Tenth Amendment to the Constitution of the United States provides, "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved for the States respectively or to the people." Within this reservation of powers to the individual states, is what has been judicially termed

"the police power."[1] Chapter 328 of the General Session Laws of 1947 was enacted in attempted exercise of that power. The authority of the legislature to pass this statute, or any other measure it may deem necessary in the public welfare, is unlimited except where prohibited by the Federal or State Constitution or in conflict with Federal law enacted pursuant to constitutionally granted authority. The enactment in question has been challenged as prohibited by the Fourteenth Amendment to the Federal Constitution and Article I, Section 17, of the State Constitution.

Neither the Fourteenth Amendment nor Article I, Section 17, contains any unqualified prohibition. Both operate to prevent the legislature from depriving anyone of individual or property rights except by due process of law. Due process is, of necessity, an elastic term which through the years has been expanded to cope with the varying problems of our increasingly complex society.

The flexible restraints which the Fourteenth Amendment has placed upon the use of its police power by a state are carefully set forth by Mr. Justice Roberts in Nebbia v. New York, 291 US 502, at pages 523 and 525:

> "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights or contract rights are absolute; for government cannot exist if the citizen may at will use [fol. 39] his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest.
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> The Fifth Amendment, in the field of Federal activity, and the Fourteenth as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaran-

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[1] "What are the police powers of the state? They are nothing more or less than the powers of Government inherent in every sovereignty to the extent of its dominion." Judge Taney, License cases, 5 How. 504, 583.

tee of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

The elasticity of these restrictions upon the use of the police power is the life-giving elasticity of the Constitution itself so vital to our economic, social and political growth. Perhaps more than that of any other social force, the progress of labor toward its rightful place in our society would have been retarded if all statutes enacted in the exercise of the police power had been measured on the Procrustean bed of judicial precedent.[2] The dictates of the Fourteenth Amendment, that "the means selected shall have a real and substantial relation to the object sought to be obtained, must be viewed in the light of contemporary conditions under which the legislature has seen fit to enact the statute in question. However, it is obvious that a clear understanding of those conditions is impossible without some resort to the historical development of the governmentally imposed rules for the struggle between the employer and the employed.[3]

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[2] For instance, the Supreme Court of the United States has sustained, as valid exercise of this power, the statutes providing for maximum hours (Bunting v. Oregon 243 US 426), workmen's compensation (New York Central Railroad Co. v. White, 243 US 188), prohibiting intimidation of employees (People v. Washburn, 285 Mich. 119; appeal denied, 305 US 577) and prohibiting racial discrimination (Railway Mail Association v. Corsi, 326 US 88).

[3] "Whether a law enacted in the exercise of the police power is justly subject to the charge of being unreasonable or arbitrary, can ordinarily be determined only by a consideration of the contemporary conditions, social, industrial and political, of the community to be affected thereby. Resort to such facts is necessary, among other things, in order to appreciate the evils sought to be remedied and the possible effects of the remedy proposed. Nearly all legislation involves a weighing of public needs as against private desires; and likewise a weighing of relative social values. Since government is not an exact science, prevailing public

[fol. 40] Until recently, the struggle between management and labor has been demonstrably one-sided with Anglo-American law favoring the side possessing "the heaviest artillery." Since the first attempts within this country to define the legal weapons and areas of combat were based upon English precedent, a brief look in that direction may be helpful.

In England, any combination of laborers to raise wages or shorten hours was a crime until 1824.[4] Until 1871, it was also a crime to threaten a strike or even to persuade an employee to leave his work;[5] in 1875, Parliament enacted legislation providing that workmen would not be subject to indictment for criminal conspiracy in effecting collectively that which was lawful for one workman to do;[6] while the closed shop was recognized as legal in 1898 by the House of

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opinion concerning the evils and the remedy is among the important facts deserving consideration; particularly, when the public conviction is both deep-seated and widespread and has been reached after deliberation. What, at any particular time, is the paramount public need is, necessarily largely a matter of judgment. Hence, in passing upon the validity of a law challenged as being unreasonable, aid may be derived from the experience of other countries and of the several States of our Union in which the common law and its conceptions of liberty and of property prevail. The history of the rules governing contests between employer and employed in the several English-speaking countries illustrates both the susceptibility of such rules to change and the variety of contemporary opinion as to what rules will best serve the public interest. The divergence of opinion in this difficult field of governmental action should admonish us not to declare a rule arbitrary and unreasonable merely because we are convinced that it is fraught with danger to the public weal, and thus to close the door to experiment within the law." Justice Brandeis, dissenting opinion, Truax v. Corrigan, 247 US 312, 356.

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[4] 5 Geo. 4, C. 95.

[5] Criminal Law Amendment Act (1871) 34 and 35 Vic. C. 32.

[6] The Conspiracy and Protection of Property Act (1875) 38 and 39 Vic. C. 86 Section 3.

Lords, acting as England's highest court,[7] that body was unwilling to declare the boycott a legal weapon of labor although it had previously held it to be a permissible economic weapon when used by a combination of shipping firms;[8] the boycott and peaceful picketing were legalized in 1906 by the Trade Disputes Act;[9] following the general [fol. 41] strikes of 1926, Great Britain prohibited local and public authorities to enter closed shop agreements;[10] that restriction was lifted in 1946.[11]

Meanwhile, in this country early labor cases followed the English courts' interpretation of the common law. The Philadelphia Cordwainers' case is generally regarded as the first labor case in America; in 1806 a combination of journeymen shoemakers to effect a higher pay schedule was held illegal under the common law doctrine of criminal conspiracy.[12] This typified the early treatment of such matters. The courts made the initial inroads in the common law rules governing the employer-employee relationship, but the multiplicity of forums made for a variety of laws among the several states. The right of workingmen to form unions and strike for legitimate ends was recognized in 1842,[13] but the judicial views on what constituted legitimate ends differed greatly.[14] Many states held the closed shop illegal even in the absence of prohibitive statutes; while many others regarded it as justifiable and legal.[15] It is

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[7] Allen v. Flood, A.C. 1, 1898.

[8] Compare Mogul Steamship Co. v. McGregor (1892) A.C. 25 and Quinn v. Leathem (1901) A.C. 495.

[9] 6 Edw. 7, C. 47 Section 2.

[10] Trade Disputes Act of 1927

[11] Trade Disputes & Trade Unions Act, 1946, 9 & 10 Geo 6, C. 52.

[12] Commonwealth v. Pullis (1806) Documentary history of American Industrial Society, Vol. 3, p. 59.

[13] Commonwealth v. Hunt, 45 Mass. 111, Cited in S. v. Van Pelt, 136 N. C. 633.

[14] For instance, in some jurisdictions the strike was held an illegal means of procuring a unionized shop; (Plant v. Woods, 176 Mass. 492) while in others it was held legal (State v. Van Pelt, supra.)

[15] Teller, Labor Disputes & Collective Bargaining, Vol. 2, Sec. 424 et seq.

not here necessary to multiply illustrations or attempt to catalogue judicial pronouncements on labor matters. It is, however, significant to note that Justice Brandeis in discussing this heterogeneous growth of labor relations law in his dissenting opinion in Truax v. Corrigan,[16] first spoke of ".... the absence of legislation, to determine what the public welfare demanded ..." and then stated "Judges, being thus called upon to exercise a quasi-legislative function and weigh relative social values, naturally differed in their conclusions on such questions."

[fol. 42] Ultimately, state legislatures did attempt "to determine what the public welfare demanded" by enacting laws defining the area of permissible conflict open to industrial combatants. Their general authority to do so has been firmly established.[17] In the realm of labor contracts, the Supreme Court of the United States has sustained, as valid exercise of state police power, legislation providing for maximum hours,[18] worker's compensation,[19] forbidding payment of seaman's wages in advance,[20] prohibiting intimida-

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[16] Supra, page 3.

[17] "The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted." Carpenters' Union v. Ritter's Cafe, 315 US 722, @ 725.

"That the State has power to regulate labor unions with a view to protecting the public interest is, as the Texas court said, hardly to be doubted." Thomas v. Collins, 323 US 516, @ 532.

"It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of society in which they exist. This is but an instance of the power of the State to set the limits of permissible contests open to industrial combatants." Thornhill v. Alabama, 310 US 88, pp. 103 & 104.

[18] Bunting v. Oregon, supra.

[19] New York Central Railroad Co. v. White, *supra*.

[20] Patterson v. The Bark Eudora, 190 US 169.

tion of employees,[21] and prohibiting racial discrimination.[22] In commenting on the latter decision, Professor E. Merrick Dodd stated, "Whatever might have been thought to be the law in the days when liberty of contract was treated by the Supreme Court as an almost absolute constitutional privilege, the decision in the *Corsi* case was to be expected. It is a natural consequence both of the increase in the economic power of unions and of the Supreme Court's increasing recognition, in recent years, that to refuse to treat the economic power of particular private groups as a constitutional justification for their regulation is in effect to substitute private government for government of, by and for the people. Now that employers have lost what were [fol. 43] formerly regarded as their constitutional rights of discriminating against union members and of paying less than legislatively determined minimum wages, now that statutory bargaining rights granted to unions have been found to create implied duties not to discriminate against racial or religious groups, a union's claim that anti-discrimination laws infringe its constitutional liberties is a palpable anachronism. Moreover, what is true of labor unions, economic institutions which even when they have no closed shop agreements, tend to obtain a large measure of job control, is presumably true a fortiori of employers, who are the creators of jobs."[23]

The most comprehensive gains made by labor have unquestionably been made in the field of Federal legislation. It is neither possible nor necessary for us to do more than highlight those gains in this opinion. *The Clayton Act* in 1914 restricted the use of the injunction in labor disputes in an effort to correct an almost universally recognized abuse of that judicial process.[24] This marked the first major step taken by Congress in enacting rules beneficial to labor in its conflict with management. However, it fell far short of its purpose and the Norris-LaGuardia Act in 1932 further and more specifically restricted the use of the injunction in addition to prohibiting "yellow dog contracts" and limiting

[21] People v. Washburn, *supra*.

[22] Railway Mail Association v. Corsi, *supra*.

[23] 58 HLR 1018 @ 1061.

[24] The Clayton Act, Oct. 15, 1941, C. 323, Sec. 20, 38 Stat. 730, 738.

the liability of union officials.[25] In 1935 Congress enacted the National Labor Relations Act[26] declaring the public policy of the United States to be the encouragement of collective bargaining and the protection of "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." To safeguard those rights, the Act prohibited five specified [fol. 44] types of unfair employer practices. It further provided for the settlement of questions as to who are to represent employees, and it specifically preserved the right to strike. Among other provisions of the Act was the authorization of closed shop agreements with the specific limitation that nothing contained in the Act would permit such agreements in states under whose laws they were illegal.

Perhaps it might be said with the passage of The National Labor Relations Act, "the labor movement has come full circle."[27] Perhaps that statute only marked a temporary high point in the progress of labor which will some day be surpassed. We cannot know now, and our feelings in the matter have no bearings upon the case at hand. What is more important to a consideration of this case is that Congress contemporaneously with the adoption of Chapter 328, by the North Carolina General Assembly, determined that it had gone too far in licensing weapons which labor might use in obtaining its ends and that further restrictions thereon were necessary in the public interest. The Taft-Hartley Act[28] was primarily adopted for that purpose. The purpose and provisions of that statute, therefore, become highly important to a consideration of the contemporary conditions out of which Chapter 328 also emerged.

Section 1 of the National Labor Relations Act has found, as a basis for that statute, that the national welfare had

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[25] Act of March 23, 1932, C. 90, 47 Stat. 70 and 73.

[26] The National Labor Relations Act, Act of July 5, 1935, C. 3725, 149 Stat. 499.

[27] Justice Jackson, dissenting opinion, Hunt v. Crumbach (1945), 325 US 821.

[28] The Labor Management Relations Act, Chapter 120, Public Law, 101.

been adversely affected by several stated malpractices of management in its dealings with labor. Section 1, of the Taft-Hartley Act restated those findings on the basis of evidence considered by Congress, finding that both labor and management were guilty of acts in their relationship to each other which necessitated mutual regulation in the public interest.[29] The industrial strife and disruption of the national economy which led to this finding of dual responsibility and blame are briefly summarized in the reports which accompanied the Senate and House Bills and the conference committee's report at the adoption of the Taft-Hartley Act of 1947.

[fol. 45] Section 7 of the Taft-Hartley Act prohibits the narrowly defined closed shop, and Section 8(3) permits a union shop subject to certain conditions. Section 14(b) supplements these sections by providing:

> "'(b) Nothing in that Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which

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[29] "During the last few years the effects of industrial strife have at times brought our country to the brink of a general economic paralysis. Employees have suffered; employers have suffered; and above all the public has suffered. The enactment of comprehensive legislation to define clearly the legitimate rights of employers and employees in their industrial relations in keeping with the protection of the paramount public interest is imperative." House of Representatives, 80th Congress, First Session, Report No. 245 (Accompanying HR 3020).

"We have felt that on the record before us the abuses of the system have become too serious and numerous to justify permitting present law to remain unchained. . . . Numerous examples were presented to the Committee of the way union leaders have used closed shop devices as a method of depriving employees of their jobs and in some cases a means of securing a livelihood in their trade or calling for purely capricious reasons." Senate, 80th Congress, First Session (Report No. 105).

such execution or application is prohibited by State or Territorial Law.' "[30]

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[30] The possible need for supplemental state legislation, based on the actual administration of the Taft-Hartley Act, was revealed by the chief administrative officer of the National Labor Relations Board, General Counsel Robert N. Denham, in a speech to the St. Louis Bar Association on November 3, 1947. In discussing the growth of bootleg contracts for union or closed shops made in defiance of the Taft-Hartley Act, Mr. Denham stated: "At this point, it also might be well to invite your attention to a situation which has arisen on many occasions since August 22. That is, there has been occasions when employers have enjoyed satisfactory relations with the union in their plant. The contract has expired since August 22, and the union and the employer are attempting to negotiate a new contract. There is no question of recognition involved, because the employer is quite willing to recognize the union and realizes that it does, in fact, represent a majority of his employees. But the union insists that the new contract contain a union shop provision. Let us assume that the union is one which has not complied with the requirements concerning filing certain data with the Secretary of Labor and certain affidavits of its officers with the National Labor Relations Board. In short, the union is not in a position where it can request the Board to conduct the usual union shop election. Nevertheless, the employer in seeking to maintain his relations with the union, accedes to the union's demands and executes a contract with the union shop provision in it without the required election among the employees. The National Labor Relations Board can not prevent such a contract and there is nothing inherently illegal in it, but it does not afford either the union or the employer any protection, because, if the employer should discharge an employee at the insistence of the union for having lost his good standing with the union, even if it should be for nonpayment of dues, such a discharge would constitute an unfair labor practice and the employer could expect that if charges were filed, he would be ordered to reinstate the employee; he might be ordered to make the employee whole for back pay loss, or the union, in such circumstances, might be required to make the employee whole out of its funds."

[fol. 46] The committee on Education and labor explained this provision to the House as follows: ". . . by section 13 the United States expressedly declares the subject of compulsory unionism one that the States may regulate concurrently with the United States, notwithstanding that the agreements affect commerce, and notwithstanding that the State laws limit compulsory unionism more drastically than does Federal Law."[31]

The report of the Senate Committee on Labor and Public Welfare[32] discusses the Committee's findings and the evidence adduced by it which led to the enactment of the provisions referred to above. Those findings are so pertinent to the reasonableness and relevancy of the North Carolina "Right to Work Statute" that it behooves us to quote at length from the report.

> "A controversial issue to which the committee has devoted the most mature deliberation has been the problem posed by compulsory union membership. It should be noted that when the railway workers were given the protection of the Railway Labor Act, Congress thought that the provisions which prevented discrimination against union membership and provided for the certification of bargaining representatives obviated the justification for closed-shop or union shop arrangements. That statute specifically forbids any kind of compulsory unionism.
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> The argument has often been advanced that Congress is inconsistent in not applying this same principle to the National Labor Relations Act. Under that statute a proviso to section 8(3) permits voluntary agreements for compulsory union membership provided they are made with an unassisted labor organization representing a majority of the employees at the time the contract is made. When the committees of the Congress in 1835 reported the bill which became the present National Labor Relations Act, they made clear that the proviso in section 8(3) was not intended to override State laws regulating the closed shop. The Senate committee stated that 'the bill does nothing to

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[31] House Report, 245, 80th Cong., 1st sess. at P. 34.

[32] Senate Report, 105, 80th Cong., 1st sess. PP. 5, 6, and 7.

facilitate closed-shop agreements or to make them legal in any State where they may be illegal' (S. Repr. No. 573, 74th Cong. 1st sess., p. 11; see also H. Rept. No. 1147, 74th Cong., 1st sess., pp. 19-20). Until the beginning of the war only a relatively small minority of employees (less than 20 per cent) were affected by contracts containing any compulsory features. According to the Secretary of Labor, however, within the last 5 years over 75 per cent now contain some form of compulsion. But with this trend, abuses of compulsory membership have become so numerous there has been great public feeling against such arrangements. This has been reflected by the fact that in 12 States such agreements have been made illegal either by legislative act or constitutional amendments, and in 14 other States proposals for abolishing such contracts are now pending. Although these regulatory measures have not received authoritative interpretation by the Supreme Court (see A. F. of L. v. Watson, 327 U. S. 582), it is obvious that they pose important questions of accommodating Federal and State legislation touching labor [fol. 47] relations "in industries affecting commerce (Hill v. Florida, 325 U. S. 438; see also, Bethlehem Steel Co. v. N. Y. Labor Board, decided by the Supreme Court April 7, 1947.) In testifying before this committee, however, leaders of organized labor have stressed the fact that in the absence of such provisions many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost.

"The committee has taken into consideration these arguments in reaching what it considers a solution of the problem which does justice to both points of view. We have felt that on the record before us the abuses of the system have become too serious and numerous to justify permitting present law to remain unchanged. It is clear that the closed shop which requires preexisting union membership as a condition of obtaining employment creates too great a barrier to free employment to be longer tolerated."

At this writing 15 States have been called to our attention in which laws have been adopted prohibiting closed

shops, either by constitutional amendment of by legislative act.[33] The provisions of this legislation are comparable or substantially similar to Chapter 328.[34] Great weight must be attached to the fact that so many separate jurisdictions have, within a short space of time, seen fit to exercise their police power in the same manner and for the same purposes. The composite will of such a broad cross section of our country cannot be lightly discarded as unreasonable, arbitrary or capricious or lacking in substantial relationship to its objective. "Since government is not an exact science, prevailing public opinion concerning the evils and the remedy is among the important facts deserving consideration; particularly, when the public conviction is both deep-seated and widespread and has been reached after deliberation."[35]

The appellants contend that Chapter 328, together with Chapter 75 of the General Statutes, constitutes class legislation and is discriminating so as to deny them equal protection as guaranteed by the Fourteenth Amendment of the Federal Constitution and Article I, Sec. 17, of the State Constitution. The nature of the employer-employee relationship has itself long been recognized as constitutional justi- [fol. 48] fication for legislation applicable only to persons in that relative status.[36] The only question raised by the plea of discrimination is whether the statute applies alike to all employers and to all employees within its scope who may be found situated in like circumstances and conditions.[37]

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[33] In Arizona, Arkansas, Florida and Nebraska constitutional amendments of that character have been recently adopted.

[34] Such statutes have been enacted in Delaware, Georgia, Louisiana, Tennessee, Texas, Virginia, and Iowa.

[35] Justice Brandeis, dissenting opinion, Truax v. Corrigan, supra, p. 3. See also Muller v. Oregon, 208 U. S. 412.

[36] New York Central Railroad Co. v White, 243 U. S. 188. Arizona Employers Liability case, 250 U. S. 400. Second Employers Liability Case, 223 U. S. 1. Mullen v. Oregon, supra.

[37] Barbier v. Connolly, 113 U. S. 27. Hayes v. Missouri, 120 U. S. 68.

Any legislation in exercise of the police power must perforce affect in different degrees persons or groups within its orbit who occupy different economic, social or political positions with reference to the ends sought by the legislation. Thus Chapter 328 may enable a non-union workman to obtain a "free ride" by receiving benefits attained through the expense and efforts of union workmen, but neither this nor other illustrations which might be given of the variable incidences of the statute upon persons differently circumstanced can render the Act discriminatory. Chapter 328 is geographically co-extensive with the State of North Carolina and its provisions are applicable with the same force to all employers within those boundaries just as they are applicable to all employees therein. It is difficult to see how, within the scope of its authority, the statute could be more uniform in its application.

We can see no merit in the appellants' proposition that Chapter 328 violates the Fourteenth Amendment by abridging the rights of free speech and assembly guaranteed by the First Amendment. That argument has been used successfully against a certain type of legislation restricting union activity. The Supreme Court of the United States in Thornhill v. Alabama, *supra*, held that a state statute prohibiting peaceful picketing was void as infringing upon the natural rights secured by the First Amendment. A [fol. 49] like result was reached in Thomas v. Collins, 323 U. S. 516, with respect to a state statute requiring procurement of an organization card as a prerequisite to the solicitation of workmen to join a union. However, Chapter 328 bears no resemblance to that type of statute. On the contrary, it seems to us that Chapter 328 may serve to secure the rights of free speech and assembly to all persons concerned. The statute protects the rights of workmen to organize; it further protects rights of workmen to express their individual opinions by refusing to join unions. The right of either side, or any faction of any side, to a labor controversy to assemble and publicize its own ideas remains inviolate.

The essence of the courts' decision in Thornhill v. Alabama, is contained in the following statements of Mr. Justice Murphy at pages 102 and 103 of the opinion: "In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as

within that area of free discussion that is guaranteed by the Constitution. . . . Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensible to the effective and intelligent use of the processes of popular government to shape the destiny of modern society." Mr. Justice Rutledge, speaking for the Court in Thomas v. Collins, stated at page 532, "The right to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as a part of free speech, but as a part of free assembly." Regardless of how salutary the net result of a closed shop agreement may be, it seems patent to us that the freedom of discussion and dissemination of ideas by all concerned in labor disputes are more restricted by such agreements than by a statute which stresses individual initiative and liberties by prohibiting the use of union membership or the absence thereof as a condition of employment.

The General Assembly of North Carolina has attempted to draw upon the residual powers of the State in an effort to remedy a situation of economic instability which has alarmed thinking people throughout the country. Those efforts have culminated in a prohibition upon the use of [fol. 50] union membership or the absence of union membership as a condition of employment or continued employment. Substantially the same result has been reached in many other state forums which have considered the problem and also to a limited degree by the Congress of the United States.[38] In one of those States, Florida, the people adopted a Constitutional Amendment having the same purpose and effect as Chapter 328. A three judge Federal

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[38] See: The Labor Management Relations Act, discussed *supra*. The Railway Labor Act, Act of May 20, 1926 C. 347, 44 Stat. 577; as amended by Act of June 21, 1934, C. 691, 48 Stat. 1185; Act of April 10, 1936, C. 166, 49 Stat. 1189, among other things, prohibits closed shop or "yellow dog" contracts in the labor relations of railroads and airlines and their employees. The constitutionality of the statute has been broadly sustained. Shields v. Utah Idaho Cent. R. Co., 305 U. S. 177; Virginia Ry. Co. v. System Federation No. 40, 300 U. S. 315.

District Court held the amendment valid exercise of State police power.[39]

State laws similar to Section 4 which outlaw "yellow dog contracts" were first ruled unconstitutional[40] but are now regarded as valid.[41] The appellants have not questioned the constitutionality of Section 4. They contend, on the contrary, that such a provision outlawing contracts requiring abstinence from union membership should be held constitutional and that a contrary result should be reached respecting the corollary provisions of Sections 2, 3 and 5 prohibiting union membership from being made a requisite of employment. We cannot accept this view. In either instance, the state is merely delineating the area within which two factions with largely conflicting aims may wage their disputes without transgressing the public welfare. If the State may say to the employer, "you cannot deny work to anyone because of his membership in a union," we think it follows, *a fortiori*, that the state may say to the parties, "you cannot deny work to anyone because he is not a member of a union."[42]

[fol. 51] We are not called upon here to determine the wisdom of the Legislature's action in adopting Chapter 328. Our sole concern must be whether the Legislature has acted within the limitations imposed upon it by the Fourteenth Amendment to the Federal Constitution and Article

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[39] American Federation of Labor v. Watson, 6 F. Supp. 1010, reversed in 327 U. S. 582, on the grounds that the Florida Amendment has not been interpreted by the highest court of Florida.

[40] Coppage v. Kansas, 236 U. S. 1.

[41] Cf. NLRB v. Jones & Laughlin Steel Corp., 301 US 1; Phelps-Dodge Corp. v. NLRB, 313 U. S. 177.

[42] "Accordingly, decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty. . . . The Constitution protects no less the employees converse right. Of course espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause. It is entitled to the same protection." Thomas v. Collins, *supra*.

I, Section 17, of the State Constitution.[43] In determining that question we believe that Article I, Section 17, should be viewed in the same light Justice Holmes regarded the Fourteenth Amendment: "There is nothing I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires in the insulated chambers afforded by the several States, even though the experiments may seem futile or even noxious to me and those whose judgment I respect."

[fol. 52] While, perhaps, we do not share the resentment expressed by the great Jurist, we may point out that the Congress seems to have made clear its intention to recognize as valid the particular experiment inaugurated by Chapter 328.

In summary, the case, stripped to decisional factors, falls into simple lines. The power of the State by general legislative act, in the exercise of its police power, to condemn private contracts found to be injurious to the public welfare, to declare them contrary to public policy and prevent their consummation cannot be denied. Exercised within constitutional limitations, it is both a necessary and a salutary function of government, the exercise of which is not infrequently an exigent duty. Within those limitations the occasion justifying the exercise of the power is within the legislative discretion, provided only that its action is not arbitrary or capricious and has a reasonable relation to the end sought to be accomplished.

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[43] "The wisdom or lack of wisdom of a state statute or of a provision in a state constitution is not a matter for the courts. The people, through their representatives in the Legislature and through their vote for an amendment to their constitution, have the right to commit folly if they please, provided it is not prohibited by the Federal Constitution or antagonistic to Federal statutes authoritatively enacted concerning the matter involved. 'The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands.'" American Federation of Labor v. Watson, supra.

The rights of property guaranteed by our Constitution are necessarily relative to those held by others under the same Constitutional sanctions. The right of contract, whether considered as natural or merely civil, is a property right; certainly of no greater dignity than the right to work, ordinarily regarded as inalienable; and it cannot be unrestrictedly used to the injury of another. Under such circumstances the exercise of the State's police power in its regulation is not a violation of Due Process required by the Fourteenth Amendment. We cannot find that the legislature exceeded its powers. The General Assembly felt that it could no longer avoid the issue of the closed shop; and probably felt that so far as it concerned the principle which it felt should be preserved there is no substantial difference between the "closed shop" and the so-called "all union shop." We cannot say that the matter was not a proper subject of governmental regulation or that government has become so ensnarled in its own charter as to be forced to admit its impotency.

Being of that opinion we further conclude that the record does not disclose error which would justify us in disturbing the result of the trial. We find no error.

No Error.

[fol. 52a] [File endorsement omitted.]

[fol. 53] In Supreme Court of North Carolina, Fall Term, 1947

No. 78, Buncombe County

State

vs.

Geo. Whitaker, A. M. DeBruhl, T. G. Embler, H. E. Setzer, J. E. Rogers, Fred Black & R. B. Robertson

Judgment—December 19, 1947

This cause came on to be argued upon the transcript of the record from the Superior Court, Buncombe County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable A. A. F. Seawell, Justice, be certified to the said Superior Court, to the intent that proceedings be had therein in said cause according to law as declared in said opinion. And it is considered and adjudged further, that the Defendants do pay the costs of the appeal in this Court incurred, to wit, the sum of One Hundred Seventeen and 75/100 dollars ($117.75), and execution issue therefor.

[fol. 54] IN THE SUPREME COURT OF NORTH CAROLINA

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable W. P. Stacy, Chief Justice of the Supreme Court of North Carolina:

Your petitioners, George Whitaker, A. M. DeBruhl, T. G. Embler, H. E. Setzer, J. E. Rogers, Fred Black and R. B. Robertson, respectfully show:

1. Petitioners are the appellants in the above entitled cause. Petitioner George Whitaker is a building contractor in the City of Asheville; petitioner A. M. DeBruhl is an officer of the Asheville Building and Construction Trades Council, and the remaining petitioners are officers and agents of local trade unions or craft organizations affiliated with the American Federation of Labor. Such petitioners, after being arrested on warrants and tried before a jury in the Police Court of the City of Asheville, were found guilty of violating Sections 2, 3 and 5 of Chapter 328 of the Sessions Laws of 1947. Such sections made it a misdemeanor, by reference to Chapter 75 of the general statutes, for any person to enter into any sort of closed-shop or union-security agreement or other agreement whereunder membership in a labor organization is made a condition of employment.

2. From the conviction, judgment and sentence of a $50 fine, the defendants appealed to this Court, and on December 19, 1947, this Court entered a decision and judgment or decree affirming the conviction, judgment and sentence of the [fol. 55] court below. This Court is the highest court of

North Carolina in which a decision in this suit can be had, and this Court's decision and decree in this cause is final.

3. In this cause there was drawn in question the validity of Sections 2, 3 and 5 of Chapter 328 of the Sessions Laws of 1947 on the ground that said statute was repugnant to the Constitution and Laws of the United States, and the decision of this Court was in favor of the validity of such statute, notwithstanding your petitioners' contention, made both before the trial court and this Court, that the said statute violated the First and Fourteenth Amendments to the United States Constitution.

4. The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the assignment of errors, filed herewith, pursuant to Rules 9 and 13 of the Rules of the Supreme Court of the United States; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States, which statement demonstrates that the federal questions are substantial and that the issues are of sufficient importance to warrant, indeed to require, consideration and determination by the Supreme Court of the United States.

Wherefore, your petitioners pray for the allowance of an appeal from the said Supreme Court of North Carolina, the highest court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and judgment or decree of the said Supreme Court of the State of North Carolina may be examined and reversed, and also pray that a transcript of the record, proceedings and papers in this cause, [fol. 56] duly authenticated by the Clerk of the Supreme Court of the State of North Carolina, under his hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioners, and that the bond for costs and supersedeas tendered by the petitioners be approved.

George Pennell, 409 Legal Building, Asheville, North Carolina; J. Albert Woll; Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D.C., Counsel for Petitioners.

Dated this 6 day of February, 1948.

[fol. 57] IN THE SUPREME COURT OF NORTH CAROLINA

[Title omitted]

ASSIGNMENTS OF ERROR

Come now the above named appellants, and as appellants to the Supreme Court of the United States from the decision and judgment or decree heretofore entered herein, assign as error the following:

1. The Supreme Court of North Carolina erred in failing to hold that the said Sections 2, 3 and 5 of Chapter 328 of the Sessions Laws of 1947, by forbidding appellants under any and all circumstances to enter into any type of union-security agreement and by denying the union appellants their only proven and practical method of protecting their standards, stabilizing their gains, and obtaining an adequate share of the joint product of capital and labor, deprived such appellants of rights, liberties and freedoms protected under the Fourteenth Amendment to the United States Constitution, and in failing to hold that such absolute and unconditional proscriptions against entering into union-security agreements contained in Sections 2, 3 and 5 were arbitrary, unreasonable, excessive and without rational basis.

2. The Supreme Court of North Carolina erred in failing to hold that said Sections 2, 3 and 5 of Chapter 328 of the Sessions Laws of 1947, by favoring non-union workers over union workers, and by permitting employers to retain all their traditional methods of consolidating gains against competition of other employers and against demands of organ-[fol. 58] ized labor, while denying to union members their one method of improving their conditions and consolidating their gains against the competition of nonunion workers and against the competition of employers for a fair share in the national income, all without providing an adequate substitute method, deprived the union appellants of the equal protection of the law, contrary to the Fourteenth Amendment to the United States Constitution.

3. The Supreme Court of North Carolina erred in failing to hold that Sections 2, 3 and 5 of Chapter 328 of the Sessions Laws of 1947, by outlawing the union-security agreement, and thus imperiling the very existence of labor organizations and their ability adequately to function in the in-

terests of working people, restrained the union appellants in the exercise of fundamental rights of working people protected as a concomitant of the rights of speech and assembly under the First Amendment, and protected against invasion by the State under the Fourteenth Amendment.

4. The Supreme Court of North Carolina erred in holding that Sections 2, 3 and 5 of Chapter 328 of the North Carolina Sessions Laws of 1947, as enforced criminally either under Chapter 75 of the general statutes or under the common law of the State, are constitutional, valid and enforceable both on their face and, as applied in the present case, under the First and Fourteenth Amendments to the United States Constitution, and that the judgment and sentence imposed upon appellants by the trial court herein are constitutional, valid and enforceable under such First and Fourteenth Amendments; and in failing to hold to the contrary.

[fol. 59] Wherefore, on account of the errors hereinbefore assigned, petitioners pray that the said decision and judgment or decree of the Supreme Court of North Carolina, dated the 19th day of December, 1947, in the above entitled cause be reversed and judgment entered in favor of these appellants.

George Pennell, 409 Legal Building, Asheville, North Carolina; J. Albert Woll; Herbert S. Thatcher; James A. Glenn, 736 Bowen Building, Washington 5, D. C., Counsel for Petitioners.

Dated this 6 day of March, 1948.

[fol. 60] In the Supreme Court of North Carolina

[Title omitted]

Order Allowing Appeal and Supersedeas

The petition of George Whitaker, A. M. DeBruhl, T. G. Embler, H. E. Setzer, J. E. Rogers, Fred Black and R. B. Robertson, the appellants in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from the decision and decree of the Supreme Court of the State of North Carolina, having been filed with

the Clerk of this Court and presented herein, accompanied by assignments of error and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decision and decree, dated the 19th day of December, 1947, of the Supreme Court of the State of North Carolina, as prayed in said petition, and that the Clerk of the Supreme Court of the State of North Carolina shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that the said appellants shall give a good and sufficient bond for costs and supersedeas in the [fol. 61] sum of Five Hundred ($500) Dollars, that said appellants shall prosecute said appeal to effect and answer all costs and damages if they fail to make their plea good, and that said supersedeas bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceedings in this cause until the final disposition of this cause by the Supreme Court of the United States.

W. P. Stacy, Chief Justice of the Supreme Court of the State of North Carolina.

Dated this 6th day of March, 1948.

[fols. 62-63] Bond on appeal for $500.00 approved March 6, 1948, omitted in printing.

[fols. 64-65] Citation in usual form showing service on Harry McMullan, omitted in printing.

[fol. 66] IN THE SUPREME COURT OF NORTH CAROLINA

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

To the Clerk of the Supreme Court of North Carolina:

Kindly prepare for transmittal to the Supreme Court of the United States a true copy of the entire record in this case, both as on appeal to this Court and to the Supreme Court of the United States, and including the decision and decree of the Supreme Court of the State of North Carolina. More specifically, such record shall include the following:

1. Organization of Court.
2. Warrant (Police Court).
3. Motion to Quash Warrant
4. Plea.
5. Jury and Verdict.
6. Motion for an Arrest of Judgment.
7. Judgment.
8. Appeal Entries.
9. State's Evidence.
10. Defendants' Evidence.
11. Exhibits 1 and 2.
12. Assignments of Error.
13. Stipulation of Counsel.
14. Decision and Decree of the Court.

[fol. 67] 15. Petition for Allowance of Appeal.

16. Assignment of Errors.
17. Statement of Jurisdiction.
18. Service of Appeal Papers.
19. Bond on Appeal.
20. Proof of Service of Papers required by Rule 12.
21. Order allowing Appeal and Supersedeas.
22. Citation to Appellees.
23. Return on Citation to Appellees.
24. Statement directing attention to file statement of objections to jurisdiction of United States Supreme Court and Acceptance of Same.

25. Stipulation for transcript of record.
26. Clerk's Certificate.

Respectfully submitted, George Pennell, 509 Jackson Building, Asheville, North Carolina; J. Albert Woll; Herbert S. Thatcher; James A. Glenn, 726 Bowen Building, Washington 5, D. C., Counsel for Petitioners.

Dated this 6 day of March, 1948. Agreed to by Harry McMullan, Counsel for State of North Carolina.

[fol. 68] IN THE SUPREME COURT OF NORTH CAROLINA

[Title omitted]

CLERK'S CERTIFICATE

Appeal docketed 9 August, 1947.
Case argued 5 November, 1947
Opinion filed 19 December, 1947.
Final Judgment entered 19 December, 1947.

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and proceedings in the above entitled case as the same now appear from the originals on file in my office.

I further certify that the rules of this Court prohibit filing of petitions to rehear in criminal cases.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this the 6th day of March, 1948.

Adrian J. Newton, Clerk of the Supreme Court of the State of North Carolina. (Seal.)

[fol. 69] IN THE SUPREME COURT OF THE UNITED STATES

APPELLANTS STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed March 12, 1948

Comes now the appellants and adopt their assignments of error as their statement of the points to be relied upon, and represent that the whole of the record, as filed, is necessary for the consideration of the case.

J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C.; George Pennell, 509 Jackson Building, Asheville, North Carolina.

Dated this 11th day of March, 1948.

[fol. 70] [File endorsement omitted.]

[fol. 71] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—March 29, 1948.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument immediately following No. 626, American Federation of Labor et al. vs. American Sash & Door Company et al.

Endorsed on Cover: File No. 52,890. North Carolina, Supreme Court, Term No. 660. George Whitaker, A. M. DeBruhl, T. G. Embler, et al., Appellants, vs. State of North Carolina. Filed March 8, 1948. Term No. 660, O. T. 1947.